No. 19 of 1982

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 :

THE RIVER ESTATES Sdn. Bhd. — Appellant

- and -

THE DIRECTOR GENERAL OF INLAND REVENUE — Respondent

RECORD OF PROCEEDINGS

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No. 19 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:

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NO. 19 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:

THE RIVER ESTATES Sdn. Bhd. — Appellant

- and -

THE DIRECTOR GENERAL OF INLAND REVENUE — Respondent

RECORD OF PROCEEDINGS

No. 1

AGREED STATEMENT OF FACTS

In the High Court in Borneo at Kota Kinabalu

No. 1
Agreed Statement of Facts
27th July 1976

1. The appeal of The River Estates Sdn. Bhd. (hereinafter referred to as "the Appellant") is against the assessments of the Director-General of Inland Revenue (hereinafter referred to as "the Revenue") in respect of Additional Assessments raised under Notices dated the 15th December 1973 for the Years of Assessments 1969, 1970, 1971 and 1972.

2. The Appellant Company was registered in March 1950 and commenced business the same year.

3. The principal objects of the Company were, inter alia,

(i) the acquisition of any rubber, coffee, cocoa, coconut or other plantations; and

(ii) the carrying on of the business of planters, growers and manufacturers of rubber, tobacco, coconut, copra, tea, coffee, cinchons, rice, tapioca, cocoa, cereals and other natural products of any kind.

4. The Appellant immediately upon its

registration commenced business by acquiring two rubber estates in 1950 viz

(i) Litang Estate with a total area of 4,700 acres of which 1,000 acres was planted with rubber; and

(ii) Bode Estate of a total area of 900 acres of planted rubber with no reserve land

5. The head office of the Appellant was at Sandakan from where effective overall management and control of all its business operations was exercised. These included marketing of the Appellant's products, determination of sales policies and procedures, contracts for capital equipment and purchases of major items such as fuel, fertilizers and general stores.

6. The individual Estates of the Appellant held cash balances for payroll and similar operational disbursements and maintained, for central supervision, records in this specific connection.

7. Staff and equipment for the extraction of timber and consequential planting operations have been transferred from one location to another.

8. Assessments were raised for the four Years of Assessment 1968-1972 as follows:-

Date of Notice	Year of Assessment	Tax Assessed
26.5.69	1968	1,061,556
22.9.69	1969	46,649
23.1.71	1970	221,839
17.4.71	1971	495,000
30.3.72	1972	500

9. Following the Notices of Assessment referred to above the Revenue adopted the view the Appellant's estate or plantation operations were a separate source or business from its timber extraction operations and computing the adjusted income accordingly served the Appellant with Additional Notices of Assessments dated 15th December 1973 for the relevant years, viz

Year of Assessment	Additional Assessment
1968	$ 431,112
1969	356,253
1970	1,019,229
1971	90,790
1972	67,202

10. The Appellant, following a failure of negotiations with the Revenue, appealed against the relevant Additional Assessments on the grounds that they were excessive in that the Appellant's chargeable income from its business has been incorrectly computed in that

(i) Plantation allowances due under Schedule 3; and

(ii) capital allowances due under Schedule 3

of the Income Tax Act 1967, have not been deducted. The formal grounds of Appeal are set out in the prescribed Form Q dated 30th October, 1975.

11. It is the contention of the Revenue that the Appellant's timber operations and plantation operations constitute two separate sources or businesses and therefore disentitle the Appellant to the relevant allowances as claimed and set out under Form Q.

12. It is the contention of the Appellant that its timber and plantation operations constituted an integral part of its business entitling it to the relevant allowances claimed under Schedule 3.

13. The computation of Chargeable Income for the relevant years of assessments as made by the Appellant and the Revenue are as follows:-

	Appellant's Computation (One Source)	Revenue's Computation (Two Sources)
1968	$2,357,089	$3,317,040
1969	NIL	713,275
1970	389,336	2,076,023
1971	NIL	1,050,508
1972	NIL	80,656

14. The question for the determination of the

In the High Court in Borneo at Kota Kinabalu

No. 1
Agreed Statement of Facts
27th July 1976
(continued)

Special Commissioner is whether upon the facts and in law the Appellant's timber and plantations operations constituted a single integral business, as claimed by the Appellant, or were two distinct sources or business, as claimed by the Revenue.

DATED this 27th day of July, 1976.

SHEARN DELAMORE & CO.,
Solicitors for the Appellant

SENIOR FEDERAL COUNSEL
for
Director-General of Inland Revenue

In the High Court in Borneo at Kota Kinabalu

No. 2
Affidavit of Datuk R.G. Barrett sworn
19th July 1976

No. 2

A F F I D A V I T

I, DATUK RICHARD GUY BARRETT of Sandy Plain, Sandakan, Sabah, Malaysia, a British Subject resident in Malaysia affirm and say as follows:-

1. I am the Managing Director of River Estates Sdn. Bhd. (hereinafter referred to as "the Company") having its registered office at Leila Road, Sandakan, and am duly authorised to make this Affidavit.

2. My professional interests have always been in planting and in particular in the development of large estates from jungle. I came to North Borneo as an Assistant Manager on a rubber estate in August 1937, became an Ordinary Member of the Incorporated Society of Planters some two months later and, having successfully passed the Association's professional examinations, became an Associate Member in October 1939.

3. I held 30% of the shares of the Company at the time of its incorporation in April 1950. In May 1955 my shareholding was increased to 55% and in 1967 to virtually 100%. I now hold 4710,900 shares and the remaining 4100 shares are held by my wife.

4. Immediately upon its incorporation the Company acquired two rubber estates, viz

(i) Litang Estate on the Segama River with a total area of 4,700 acres of which 1,000 acres was planted with rubber; and

(ii) Bode Estate off the southern end of Sandakan Bay with a total of 900 acres fully planted.

5. The Increase in my shareholding from 30% to 55% effective from May 14th, 1955 was in consideration of the transfer of Bode Estate to the only other shareholder in the Company.

6. Pursuant to the intention to plant the 3,700 acres of reserve land at Litang, hand logging operations were begun in late 1950 using a locomotive, rail and other equipment.

7. The above logging operations were carried out on the estate simultaneously with the production of rubber at both Litang and Bode. The logging operations were under the supervision of the Litang Estate Manager.

8. In 1951 a rubber nursery was established at Litang from which 27 acres of suitable cleared land was planted up in 1953.

9. Over the years (i.e. between 1953 and 1964), the Company planted at Litang 989 acres of rubber, 814 acres of cocoa and 500 acres of oil palms but severe floods destroyed virtually all the cocoa, all the oil palms save 25 acres, and reduced the young rubber to 619 acres. The 1,000 acres of old rubber was not significantly affected by these floods.

10. The planting at Litang was dependant on the logging facilities and it was only in 1959 that crawler tractors were readily available for logging, and thus for the first time it became possible to log the hills which were the greater and more suitable part of the Litang reserve, and logging operations continued until late 1962 with progressive planting of rubber, cocoa and oil palms.

11. In 1952 I had ascertained that the land at Dagat, a tributary to the Segama was generally attractive as potential planting land, and as hand logging on the Litang flats was completed by late 1952, the land logging gang with all its equipment was moved down river to Dagat where the Forest Department had authorised the Company to operate on an annual licence basis.

12. Over the next few years there were significant changes in basic Forest Department policy and extensive areas were Gazetted as Forest Reserves - including the Dagat area and all the land on both sides of the Segama River except of course for the Litang and Tomanggong (see 13 below) land titles. Having constituted these reserves, the Forest Department then replaced most of the annual licenses with 21 years licenses, including that covering our operation at Dagat.

13. During 1958 the Company undertook experimental planting of oil palms at Litang but the acreage available there was inadequate and so in 1961 the Company purchased a block of 10,025 acres from the Guthrie Corporation, which block of land has since been known as Tomanggong Estate. This land title was, apart from Litang, the only land title on the whole of the Lower Segama. Its western boundary was about 5 miles distant from Litang's eastern boundary. It was planned to finance the planting at Tomanggong partly from the commercial timber on these 10,025 acres and partly from the Dagat timber operations

14. Work on timber extraction and site clearance began in late 1962 and 270 acres were planted up in 1963. By the end of 1964 a total of 1,475 acres had been planted. Unfortunately the 1965 flood destroyed 656 acres of this initial planting, but nevertheless planting continued until 1969 when we had planted up on this original land title approximately 3,000 acres of oil palms (exclusive of areas lost due to floods). As a result of the 1965 flood, it became clear that the 10,025 acre title would provide only some 3,000/3,500 acres of land suitable for perrenial crops and so we applied to the State Government for 6,454 acres of adjacent Forest Reserve land to be excised from the Forest Reserves which surrounded Tomanggong. After some two years of delays we were given a title to this 6,454 acres which is now an integral part of Tomanggong.

15. Thereafter the planting of oil palms continued in this new block of land, and the total planted acreage is now 8,382 acres. Additionally a Factory was constructed in 1967/69 and came into operation in the latter part of 1969.

16. In 1967 it was estimated that Tomanggong Estate should be self supporting by 1972 and that

planning should therefore begin for the development of the good plantation land at Dagat.

17. Following a careful survey of the Japan market and the importation of suitable planting material (jointly with the Department of Agriculture), the Company applied for 10,000 acres at Dagat for development into a banana estate. Government's initial reaction was favourable and the planting material previously held in quarantine was released to us in 1969 for multiplication in nurseries at Dagat.

18. Notwithstanding approval of the area selected and substantial support for the project from the Department of Agriculture, we were eventually told by the Department of Natural Resources, after correspondence extending over two years, that the State Government could not agree to excise this 10,000 acre block from the Forest Reserve.

19. So that although by this time we had increased by multiplication in the Dagat nurseries our available material to the point when in the following year it would have sufficed to plant up at least 1,000 acres of bananas, we had no alternative but to abandon the whole project.

20. Since 1965 most of the available funds of the Company have been devoted to new plantings at Tomanggong in addition to a minor replanting of 25 acres at Litang. Virtually all the plantable land covered by the two Tomanggong titles has now been planted up and application has been made to the State Government for the de-timbered land between Litang and Tomanggong and contiguous to both estates.

21. In mid 1965 the Company was approached by North Borneo Timbers with a request that it log for them that part of their concession which was within the Segama drainage on a contract basis.

22. This proposal harmonised with the Company's other activities as it meant

(i) de-timbering prospectively useful plantation land adjacent to the Company's Litang Estate, and

(ii) provided additional funds to finance a mill at Tomanggong.

23. The Company acceded to the proposal of North Borneo Timbers and after a survey of the land, including its plantation prospects, set up a camp in late 1965 and worked these Segama drainage areas during the years 1966 to 1969.

24. The other planting operation carried out by the Company was on land on the Kinabatangan River, later called Malubok Estate.

25. Malubok Estate of 3,960 acres was originally alienated as tobacco land and was purchased by the Company in mid 1959.

26. By the end of 1962, 1,500 acres of Malubok Estate was logged and 700 acres planted up.

27. Calamitous floods of January/February 1963 wiped out eighty per cent (80%) of the planted 700 acres. The remnant was fragmented by intervening low lying land as was also the remaining hill land, so that the area as a whole became economically unplantable, with the result that the Company had to abandon the Estate following refusal of the State Government to grant adjacent land on grounds that the land applied for was a part of a timber concession. This was grave disappointment but thereafter our energies and resources were concentrated on the Lower Segama.

28. My constant aim at all times has been to extend the planted acreage and to diversify the crops planted. In this respect, apart from flood losses, Government's unexpected refusal to permit the development of a 10,000 acre banana estate at Dagat was a grave disappointment, but we have planted up virtually all the plantable areas available to us and have recently applied to Government for additional land so as to increase Tomanggong's planted area by a further 6,000 acres.

29. As avarred I am a planter by profession and almost all the senior executives of the Company i.e. Estate and Camp Managers, have been planters.

30. Estate and Camp Managers and subordinate staff such as tractor drivers, grader operators and lorry drivers have been freely moved from the preliminary timber operations to estate duties and vice versa including carrying out both phases of the Company's activities.

31. Machinery, tractors, lorries, rails, locomotives and other equipment were, like staff,

frequently moved from one location to another

32. The launches of the Company besides being used to tow logs, were also employed to ferry supplies for both the camp and the estates including fertilizers, food stuffs, machinery and other equipment, and to transport the palm kernals and tow the palm oil barge.

33. I verily believe and affirm that the Company's timber extraction activities since its incorporation have at all times been not merely contiguous with but an intergral part of its plantation business.

AFFIRMED by the said DATUK RICHARD GUY BARRETT at this 19th day of July 1976 at a.m./p.m.

D.R.C. BARRETT

Before me,

PESUROYUAYA SUMFAH
Kerani Besar
Sandakan.

A Commissioner for Oaths,

THIS Affidavit is filed by Messrs. Shearn Delmore & Co. and Drew & Napier, whose address for service is at No. 2 Benteng, Kuala Lumpur.

No. 3

DECIDING ORDER

1. We, the Special Commissioners of Income Tax, find as follows:-

(i) The Appellant was incorporated in the former British Colony of North Borneo in March 1950 and commenced business in that year.

(ii) Immediately upon its incorporation, the Appellant acquired the following two properties:

(a) Litang Estate on the Sungei Segama with a total area of 4,700 acres of which 1,000 acres

were planted with rubber. The balance of 3,700 acres was virgin jungle reserve. Logging operations were commenced in 1950 in the jungle reserve and part of it was planted with rubber, cocoa and oil palms.

(b) Bode Estate with a total area of 900 acres all of which were planted with rubber. This was transferred in 1955 to the then only other shareholder in the Appellant.

(iii) In 1952, the Appellant was authorised by the Forest Department Sabah to carry out timber logging in a virgin jungle area at Dagat. No specific area was allotted to the Appellant but it logged between two and three square miles per year. In the year 1967 the Appellant with a view to establishing a prospective 10,000 acres banana plantation, imported planting material and established a banana nursery of about four or five acres. The application for alienation of 10,000 acres in this area was turned down by the Sabah State Government and as a result, the banana nursery was abandoned. The Appellant is still carrying on timber operations in that area.

(iv) Another area of 3,960 acres of largely jungle land, later known as Malubok Estate, was purchased by the Appellant in mid 1959. By the end of 1962, the Appellant had logged 1,500 acres and planted up 600 acres with cocoa and 100 acres with rubber. The floods in 1963 destroyed 600 acres of the newly planted area. As a result it was found that the area was not suitable for planting. The Sabah State Government rejected the Appellant's application for alienation of 4,000 acres adjoining that area and it therefore abandoned the area after extracting all valuable timber in it.

(v) In 1961, the Appellant acquired 10,025 acres of virgin jungle land from Guthrie Corporation and this area is now known as Tomanggong Estate. Extraction of timber in this area commenced in 1962 followed by the planting of oil palms. The Appellant also acquired from the Sabah State Government an adjoining area of 6,454 acres of detimbered land and also planted it with oil palms. By 1975 the Appellant had

planted up a total acreage of 8,382 acres with oil palms.

(vi) In 1965 the Appellant was approached by the North Borneo Timber Company Bhd. to log for them on contract an area known as Tenggara in the Kretam Forest Reserve. The Appellant agreed to work the area and was given a contract to extract timber. The Appellant was paid at a fixed rate per cubic foot of logs delivered to the North Borneo Timber Company Bhd. This contract terminated in 1969 when the North Borneo Timber Company Bhd. ceased logging in that area.

(vii) The Appellant's head office was at Sandakan from where the overall management and control of its activities, including marketing, determination of sales policies and purchases were exercised. The estate and camp managers and other subordinate staff were moved from estate duties to timber operations and vice versa. Items of plant and machinery usable both in planting and in logging operations were also moved from one location to another.

(viii) The stores requirements for all the Appellant's activities were purchased centrally at Sandakan. Cash for disbursements at camps and estates for wages and petty cash was provided from head office. The estate and camp managers kept detailed records of the expenses incurred by them in their operations and monthly returns of these were made to the head office, where a working account was maintained for each estate and camp. The balance in these accounts were transferred to the head office accounts at the end of each year. A general profit and loss account and a balance sheet were prepared at the head office.

2. The question submitted for our determination was whether the Appellant's timber and plantation operations constituted a single integral business as claimed by the Appellant or were two distinct sources or businesses, as claimed by the Respondent.

3. We, the Special Commissioners of Income Tax, after hearing the evidence and after considering the submissions made on behalf of the Appellant and the Respondent decide as follows :

In the High Court in Borneo at Kota Kinabalu

No. 3
Deciding Order of Special Commissioners

28th August 1976.

(continued)

(i) The Appellant's operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a business and each estate was a separate source of income.

(ii) The Appellant's timber operations at Dagat constituted another business and was another source of income.

(iii) The Appellant's contract to log for the North Borneo Timber Company Bhd. constituted another business and was another source of income.

4. We, therefore, order that the Director General of Inland Revenue shall give effect to our decision as set out in paragraph 3 above for the years of assessment 1968 to 1972, both years inclusive.

DATED this 28th day of August, 1976.

Sd. (GUNN CHIT TUAN)
Chairman,
Special Commissioners of Income Tax

Sd. (T. SARAVANAMUTHU)
Special Commissioners of Income Tax

Sd. (TAN SRI LIM LEONG SENG)
Special Commissioners of Income Tax

In the High Court in Borneo at Kota Kinabalu

No. 4
Case Stated

20th October 1976.

No. 4

CASE STATED by the Special Commissioners of Income Tax for the opinion of the High Court pursuant to paragraphs 34 and 35 of Schedule 5 to the Income Tax Act, 1967.

At meetings of the Special Commissioners of Income Tax held on 9th, 10th and 11th August, 1976 at Kuala Lumpur, the River Estates Sdn. Bhd., appealed against the following notices of additional assessment (all dated 15th December, 1973) for the years of assessment 1968 to 1972, both years inclusive:

Year of Assessment	Additional Tax
1968	$ 431,112.00
1969	$ 356,253.00

Year of Assessment	Additional Tax
1970	$1,019,229.00
1971	$ 90,790.00
1972	$ 67,202.00

2. The question submitted for our determination was whether the Appellant's timber and plantation operations constituted a single integral business, as claimed by the Appellant or were two distinct sources or businesses, as claimed by the Respondent.

3. Encik S. Woodhull, Advocate and Solicitor, assisted by Encik J. Bews of M/s. Turquand, Youngs & Company, appeared for the Appellant. Encik Mokhtar bin Haji Sidin, Senior Federal Counsel (Inland Revenue) assisted by Encik M.B. Gathani, Director of Inland Revenue Department, Sabah, and Encik Edward Chia Kuo Kyun, Assessment Officer, Inland Revenue Department, Sabah, appeared for the Respondent.

4. Datuk R.G. Barrett, the Managing Director of the Appellant and Encik N.K. Davidson, a partner of M/s. Turquand, Youngs & Company gave evidence for the Appellant. The Respondent did not call any witness.

5. We gave our decision on 28th August 1976 in a deciding order which is attached herewith and marked "A". The Appellant by a notice dated 6th September, 1976, requested a Case to be stated for the opinion of the High Court pursuant to paragraphs 34 and 35 of Schedule 5 to the Income Tax Act, 1967.

6. The following documents were submitted to us:

Exhibit A1 - Agreed Statement of Facts

" A2 - Bundle of Documents

" A3 - Affidavit dated 19.7.76 by Datuk R.G. Barret

" A4 - Memorandum of Association of River Estates Limited

" A5 - Sketch plan of the area of operation by the Appellant

" A6 - Map of Sabah showing the location of the estates of the Appellant

Exhibit R7 - Copies of the accounts and computations for the years of assessment 1968 to 1972

7. As a result of the evidence, both oral and documentary, adduced before us, we found the following facts proved or admitted :-

(i) The Appellant was incorporated in the former British Colony of North Borneo in March 1950 and commenced business in that year. Datuk R.G. Barret held 30 per cent of the shares at the time of incorporation. In May 1955, his shareholding was increased to 55 per cent and in 1967 to virtually one hundred per cent. He now holds 4,710,900 shares and the remaining 4,100 shares are held by his wife. Datuk R.G. Barret who is a planter by profession, has been the managing director of the Appellant since its incorporation.

(ii) The objects for which the Appellant was established were "inter alia" :-

(a) to acquire by lease, grant assignment, transfer, purchase, concession or otherwise any rubber, coffee, cocoa, coconut or other plantations, land and premises in the Colony of North Borneo or in any other country from any person or persons, syndicate or corporation, or company, Government or Municipality and to perform and fulfil the conditions thereof;

(b) to carry on the business of planters, growers and manufacturers or rubber, tobacco, coconut, copra, tea, coffee, cinchona, rice, tapioca, cocoa, cereals and other natural tropical products of any kind, the manufacture of vegetable oils, shipowners, engineers and merchants in all their branches, and any other business which can conveniently be carried on in connection with such businesses or any of them, including the purchasing and selling of timber, and clearing, planting and cultivation of lands, the making of roads, railways, tramways and other works for the development of the Company's property, and the convenient carrying on of its business, and the acquisition and working of self propelled vehicle of

any description, vessels and other means of transport and the acting as carriers by land or water and the erection and working of electrical plant, machinery and appliances;

(c) to carry on business as farmers, grasiers, cultivators, storekeepers, cattle breeders, stockmen, dealers in hide, skins, fat and other animal products, provision preservers, mechanical engineers, builders and contractors, timber growers, timber merchants, lumbermen, saw mill proprietors, shipowners, merchants exporters and importers, carriers, agents, brokers and bankers.

(iii) Immediately upon its incorporation in 1950, the Appellant acquired the following two properties:

(a) Litang Estate on the Sungei Segama (see Exhibit A5) with a total area of 4,700 acres of which 1,000 acres were planted with rubber. The balance of 3,700 acres was virgin jungle land;

(b) Bode Estate with a total area of 900 acres all of which were planted with rubber.

(iv) Datuk R.G. Barret's increase of shareholding from 30 per cent to 55 per cent in 1955 was in consideration of the transfer of Bode Estate to the only other shareholder in the Appellant before Datin Barret became a shareholder.

(v) Logging operations were commenced in 1950 in the jungle reserve land on Litang Estate with a view to planting there. In 1951 a rubber nursery was established there and 27 acres of a cleared reserve area, which had been planted with vegetables during the Japanese occupation, were planted up with rubber in 1953. There was no planting during the next two or three years but planting resumed thereafter. Between the years 1953 and 1964, the Appellant planted 989 acres of rubber, 814 acres of cocoa and 500 acres of oil palms, but severe floods in 1963 and 1965 destroyed virtually all the planted

area, except 25 acres of oil palm and 619 acres of young rubber. Since then there has been only one small replant of 25 acres on Litang Estate.

(vi) In 1952, State land at Dagat (Exhibit A5) was seen by Datuk R. G. Barrett as having potential for planting. The Appellant was during that year authorised by the Forest Department, Sabah, to carry out timber logging in a virgin jungle area there. The area was later included in a gazetted Forest Reserve. No specific area was allotted to the Appellant but it logged between two and three square miles per year under an annual licence until 1957 when the annual licence was replaced with a twenty-one year licence which permitted the Appellant to extract timber up to 1978. Gross sales of timber from this area amounted to about five million dollars per annum during the years 1967 to 1971. In the year 1967, the Appellant made an application for alienation of 10,000 acres of the de-timbered land at Dagat for development into a banana estate. An area was selected and a nursery of about 4 or 5 acres was set up. The project, although supported by the Department of Agriculture, Sabah, was turned down as the State Government could not agree to excise a 10,000 acre block from the Forest Reserve. As a result, the banana nursery sufficient to plant up at least 1,000 acres was abandoned, but the Appellant is still carrying on its timber operations in that area.

(vii) In 1961, the Appellant acquired 10,025 acres of virgin jungle land from Guthrie Corporation. This area is now known as Tomanggong Estate (marked in Exhibit A5), and its western boundary is about 5 miles from the eastern boundary of Litang Estate mentioned in sub-paragraph (iii)(a) above. Extraction of timber in this area commenced in late 1962 followed by planting of oil palms. By the end of 1964, 1,475 acres were planted but floods in 1965 destroyed 656 acres. Planting continued until 1969 and the Appellant found that only about 3,000/3,500 acres of high land out of the 10,025 acres were suitable for planting. As this area was considered by the Appellant not to be an economic holding it applied to the Sabah State Government for alienation

of 6,454 acres of adjoining Forest Reserve land in which all commercially valuable timber had been extracted. The Sabah State Government allowed the Appellant to enter the said 6,454 acres in 1968 and alienated them in 1969. Both areas were progressively planted and by 1975 the Appellant had planted a total acreage of 8,382 acres with oil palms. A factory for processing and extraction of palm oil was constructed in the years 1967/1969 and came into operation in 1969. The Appellant also applied for alienation of two other pieces of de-timbered land (marked area A and area B in Exhibit A5) totalling 6,000 acres, but the State Government has not yet approved its application for the said lands.

(viii) Another area of 3,960 acres of largely jungle land, later known as Malubok Estate (marked in Exhibit A6) was purchased by the Appellant in mid 1959. By the end of 1962 the Appellant had logged 1,500 acres and planted up 600 acres with cocoa and 100 acres with rubber. The floods in 1963 destroyed 600 acres of that newly planted area. As a result, it was found that the area was not suitable for planting. The Sabah State Government rejected the Appellant's application for alienation of 4,000 acres adjoining that area and it therefore abandoned the area after extracting all valuable timber in it.

(ix) In 1965 the Appellant was approached by North Borneo Timber Company Berhad to log for them on contract an area known as Tenggara in the Kretam Forest Reserve (marked in Exhibit A5). This area adjoins the said Litang Estate. The Appellant agreed to work the area and was given a contract to extract timber. The Appellant was paid at a fixed rate per cubic foot of logs delivered to North Borneo Timber Company Berhad. This contract terminated in 1969 when North Borneo Timber Company Berhad ceased logging in that area. The North Borneo Timber Company Berhad gave the contract to the Appellant because it was working in that area and it had invented a technique of sea towing of timber logs known as the 'Herring Bone System'.

(x) The Appellant's head office was at Sandakan from where the overall management and control of its activities including marketing, determination of sales policies and purchases were exercised by the Managing Director. All senior executives, such as the estate and camp managers of logging operations, were planters. The estate and camp managers and other subordinate staff were moved from estate duties to timber operations and vice versa. Items of the plant and machinery usable both in planting and in logging operations were also moved from one location to another.

(xi) The stores requirements for all the Appellant's activities were purchased centrally at Sandakan. Cash for disbursement of wages at camps and estates and of petty cash was provided from head office. The estate and camp managers kept detailed records of the expenses incurred by them in their operations and monthly returns of these were made to the head office, where a working account was maintained for each estate and camp. The balances in these accounts were transferred to the head office accounts at the end of each year. A general profit and loss account and a balance sheet were prepared at the head office (Exhibit R7 A-E).

8. It was contended on behalf of the Appellant that :-

(i) The definition of the word 'source' in the Income Tax Act, 1967, as "a source of income" is wholly unhelpful to decide the issue which must inevitably turn upon the facts of the case. Certain provisions of the Act would reflect the view that a "source consisting of a business" and 'a source of income' are one and the same thing.

(ii) The ascertaining of the actual source is a practical hard matter of fact.

(iii) From the evidence adduced the Appellant had acquired lands for the purpose of plantations and it is essential for and integral to this purpose to clear the land, fell and sell the timber.

(iv) The appellant was formed for the purpose of entering upon, to occupy and to win and reap the produce of land.

(v) The activity of being in occupation of land and harvesting the fruits of the land constituted a single business.

(vi) The Appellant in this case carried on the business or trade of a planter.

(vii) The central feature and fact concerning the business in the produce of the soil, the fructus naturales, was a single business of the Appellant which was integrated in every sense and that had escaped the appreciation of Revenue.

(viii) The English courts have held different activities or operations as being part of a single business.

(ix) Apart and outside the reference to land, the courts have, with special regard to facts, held different activities or operations as being part of a single business.

(x) The Appellant had pursued in a single-minded manner the primary object as professed in the memorandum of association of the company.

(xi) The object of carrying on the business of lumbermen in clause 4 of the memorandum of association was an inevitable and integral part of the plantation pursuit.

(xii) It is possible for a company to carry on one or more businesses. The real question in the words of Rowlatt J is, "was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses....."

9. It was contended on behalf of the Respondent that :-

(i) The Appellant's timber operations and activities of planting rubber, cocoa and oil palm were two separate sources of income under the Income Tax Act, 1967.

(ii) The Income Tax Act, 1967, envisages the possibility of a person having several sources of income and section 5(1) of the

Act provides for the determination of the gross income, adjusted income and statutory income from each source.

(iii) Section 5(2) of the said Act also indicates that a person (which includes a company) can have several sources of income.

(iv) Section 21(1) of the Supplementary Income Tax Act, 1967 also seems to suggest that a person can have a business with several sources.

(v) The plantation was a separate and distinct source consisting of a business and the timber operations were another separate and distinct source consisting of another business.

(vi) The allowable deductions given under Section 33(1) of the Act are those incurred for the production of gross income from that source and could not be made against another source.

(vii) The plantations were located in areas different from the areas in which timber operations were carried on.

(viii) At Dagat timber operations were carried on by the Appellant under a licence to extract timber only. The land at Dagat was not alienated to the Appellant; as such it did not own it. The Appellant had no estate or plantation there. This was more or less the same right as the Appellant had from North Borneo Timber Company Bhd. when it contracted to extract timber for it.

(ix) Litang Estate, Tomanggong Estate and Malubok Estate were all distinct from each other and situated at different places. They were also acquired at different times.

(x) Separate working accounts were kept for each operation. It was only at the end of each year that a consolidated account of all the Appellant's activities was prepared at the head office. These indicated that the business of plantation was separate from the business of timber extraction.

(xi) The transfer of plant, machinery and staff

from one activity to another did not make both activities one business.

(xii) Section 43 of the Income Tax Act, 1967 speaks of each of the business sources consisting of a business indicating that a business can have several sources.

(xiii) English authorities did not apply and were only persuasive.

(xiv) The appellant had not discharged the onus on it that it was carrying on only one business.

10. The following authorities were cited to us :-

1. Metals Ltd. v. Tax Commissioners (1940) 3 All E.R. 422 at 426.

2. C.I.R. v. Lever Brothers etc. 14 S.A.T.C. 1 at 13

3. C.I.R. v. International Wood Products Ltd. (1971) (H.K. Tax Cases) 551 at 564.

4. C.I.R. v. Williamson Brothers 31 T.C. 370

5. Elmes (H.M. Inspector of Taxes) v. Trembath 19 T.C. 72

6. Collins v. Frazer (1969) 1 W.L.R. 823

7. The Howden Boiler & Armaments Co., Ltd. v. Stewart 9 T.C. 205

8. Gloucester Railway Carriage & Wagon Co. Ltd. v. C.I.R. 12 T.C. 720

9. Laycock v. Freeman, Hardy & Willis, Ltd. 22 T.C. 288

10. Spiers & Sons Ltd. v. Ogden 17 T.C. 117

11. C.I.R. v. The Hyndland Investment Co. Ltd. 14 T.C. 694, 699

12. D.G.I.R. v. A.L.B. Co. Sdn. Bhd. (1975) 2 M.L.J. 26 at 28

13. Scales v. George Thompson & Co. Ltd. 13 T.C. 83

14. The Rubber Trust Ltd. v. D.G.I.R. O.M. No. 3 of 1972 (Penang High Court)

15. The Income Tax Act, 1967

16. Supplementary Income Tax Act, 1967.

11. We, the Special Commissioners of Income Tax, who heard the appeal, gave our decision in a Deciding Order on 28th August, 1976 (Annexure 'A'), and in accordance with paragraph 37(a) of Schedule 5 to the Income Tax Act, 1967, which requires us to give the grounds of our decision, state as follows:

(1) On the evidence, both oral and documentary, adduced before us, we found that the facts of the case were as stated in paragraph 7 above. On those facts, Counsel for the Appellant contended that the Appellant's timber and plantation operations constituted a single integral business and were not two distinct sources or businesses as claimed by Revenue.

(2) The word 'source' is defined in section 2 of our Income Tax Act, 1967, to mean "a source of income", but Counsel for Appellant suggested that that definition was not of much help and drew our attention to the following dictum of Lord Atkin in Rhodesia Metals Limited v. Tax Commissioner (South Africa) [1940] 3 All. E.R. 422 at p.426 where His Lordship said,

> "Source means not a legal concept but something which a practical man would regard as a real source of income.....the ascertaining of the actual source is a practical hard matter of fact."

Although the said definition is, in our opinion, quite clear, nevertheless we considered that we should be guided by the above dictum as well as by the dictum of Issacs J. in the well-known Australian case of Nathan v. F.C.T. (1918) 25 C.L.R. 183 wherein His Lordship said,

> "The Legislature in using the word 'source' meant, not a legal concept, but something which a practical man would regard as a real source of income. Legal concept must, of course, enter into the question when we have to consider to whom a given source belongs. But the ascertainment of the actual source of a given

income is a practical hard matter of fact. The Act on examination so treats it."

We, therefore, considered that in determining not only the question of whether the activities of the Appellant constituted a single integral business, but also that in determining for the purposes of our own Income Tax Act, the question of whether there was one, two or more sources of income, we had to decide as practical men on the facts of the case as found by us.

(3) After careful examination of the facts of the case we found and concluded that the Appellant's logging and plantation operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a single business because the logging operations on those estates were a prerequisite to planting. We also found that they were separate sources, because income could be derived from more than one source even if that source was a business (see judgment of Gill F.J. (as he then was) in the Rubber Trust Ltd. v. Director-General of Inland Revenue Penang Originating Motion No. 2 of 1972 which decision has been affirmed in Federal Court Civil Appeal No. 96 of 1972 and the judgment of Gill C.J. in Director-General of Inland Revenue v. A.L.B. Co. Sdn.Bhd. (1975) 2 M.L.J. 26 at p. 28 rhc).

(4) On the facts we also found that the Appellant's timber operations at the Dagat timber concession, which was not alienated for agricultural purposes and was situated in a different area from the Appellant's estates were not an integral part of the Appellant's business on the estates in question. The Appellant had been logging two to three square miles of jungle land each year at the said timber concession since 1952 on an annual licence, and had made gross sales of timber therefrom amounting to about $5 million per annum during the years 1967 to 1971. The annual licence was replaced with a twenty-one year licence which permitted the Appellant to extract only timber up to 1978. For many years since 1952 there was no question of the Appellant applying for alienation of any land in the said timber

concession for agricultural purposes. It was only after many years of logging in that area before the Appellant proposed to establish a ten thousand acre banana plantation there. The application for alienation of ten thousand acres of land in the timber concession was turned down by the State Government and a banana nursery of four or five acres was abandoned. After careful consideration of the facts we came to the conclusion that we could not as practical men find as a hard matter of fact that the Appellant's logging operations in the Dagat timber concession were an integral part of its business on the estates in question. We therefore, found that the Appellant's logging operations at the Dagat timber concession were divorced from its other operations on its estates at Litang, Tomanggong and Malubok and constituted a separate business and was a separate source of income.

(5) In the case of the contract to log for the North Borneo Timber Company Berhad in the area known as Tenggara within the Segama drainage the Appellant had hired out its logging equipments, services and expertise to the said Company. On the facts there could not, in our view, be any doubt at all that the Appellant's activities there were also not an integral part of its business on the estates in question or at Dagat. Here again as a practical hard matter of fact, we found that the Appellant's logging activities in question not only constituted a separate business but were also a separate source of income.

(6) Counsel for the Appellant had contended that the activity of being in occupation of land and harvesting the fruits of the land constituted a single business. The first case quoted by him was C.I.R. v. Williamson Brothers 31 T.C. 370 which was concerned with a firm of timber merchants and saw millers whose business consisted mainly in the purchase of timber, its milling and its sale as pit props. The firm had bought some sixty acres of woodlands and had cut some of the timber there for milling in its saw mills and subsequently sold the sawn timber. It was held on those facts that the profits

from the sawn timber were referable to the occupation of the woodlands and was not a separate and distinct operation unconnected with such occupation.

We agreed that the above-quoted case, and the cases of Elmes (H.M. Inspector of Taxes) v. Trembath 19 T.C. 72 and Collins v. Frazer (1969) 1 W.L.R. 823, were relevant in considering whether the Appellant's logging activities on Litang Estate, Tomanggong Estate and Malubok Estate were operations referable to the occupation of the said estates. But as regards the Appellant's logging activities in the Dagat timber concession, which were carried out elsewhere under a licence granted by the State Government, they were clearly separate and distinct operations unconnected with the Appellant's occupation of its said estates and were separate business activities. It was for that reason we held that its logging or timber activities in the Dagat timber concession constituted a separate business and were a separate source of income.

(7) On the test to be applied for the determination of whether certain activities or operations amounted to a single or separate business, Counsel for the Appellant referred us to several cases including the case of Howden Boiler & Armaments Co. Ltd. v. Stewart (1924) 9 T.C. 205, in which a firm of boiler makers which had embarked on the manufacture of shells during the First World War was held, on the facts, to have "carried on one business with two departments and not two businesses". In that case the shell manufacture was carried on in new premises erected for the purpose adjacent to but having no inter-communication with the original works, which continued to be used exclusively for the manufacture of boilers. Each manufacture had its own separate plant, separate workmen and technical and clerical staff, and separate set of books and trading accounts, but both manufactures were under the same general direction and management. All the accounts were brought into one common profit and loss account and balance sheet, bank interest and management expenses being charged against the company generally without apportionment. In our

view, although this case supported the Appellant's contention that different activities or operations could in combination constitute a single business yet we considered that because there are no provisions relating to the commencement and cessation of a trade or business in our present Income Tax Act, 1967, the case quoted, even if we had found that all the Appellant's activities constituted one business, was not relevant for the determination of the important issue in this case of whether there was one or more actual or real sources of income for the purposes of the various relevant provisions of the said Act.

(8) We agreed with the remarks of the Appellant's Counsel that the activities of the Appellant should be viewed in the light of the 'object clauses' in its memorandum of association (Exhibit A4) and that we had to look not at what the taxpayer professed to carry on but at what he actually carried on. We also agreed that the Appellant had, in the words of Counsel, "pursued in a single-minded manner the primary objects as professed in the memorandum". No one can dispute that the Appellant was empowered not only to acquire plantations and land to carry on the business of planters etc., but could also carry on business as "timber merchants, lumber-men etc.". And on the facts of this case it was clear to us that the Appellant did carry on more than one business, i.e. its logging operations at the Dagat timber concession were separate from and were not an integral part of its plantation pursuits at Litang Estate, Tomanggong Estate and Malubok Estate. Apart from using the same staff and most of the equipment as well as the timber profits made at Dagat to finance its planting on its various estates, the logging operations at the Dagat timber concession had nothing whatsoever, as a practical hard matter of fact, to do with the Appellant's plantations (see Scales v. George Thompson & Co. Ltd. 13 T.C. 83,88).

(9) Apart from the English cases, which are persuasive authorities, both Counsel also referred to our recent Federal Court case of Director-General v. A.L.B. Co. Sdn Bhd. /1975/ 2 M.L.J. 26, where His Lordship Gill C.J. held that, 'on the facts of that

case it seemed clear that the only business which the Respondent carried on was its tobacco business, so that it was quite impossible to say that they were carrying on a business of renting their premises'. In that case the Respondent had ceased to carry on the tobacco business before its land and buildings were let out on rental to other companies. The facts of the case before us showed that the Appellant here had more than one business and what is more important, for the purposes of our Income Tax Act, more than one source of income. The Appellant's statutory income must, therefore, be calculated in accordance with section 42 of the Income Tax Act, 1967, in respect of each of its sources of income.

(10) In this case, although both Counsel for the Appellant and the Respondent had asked us to determine the question as posed by them and referred to in paragraph 2 above, it was clear to us that our decision on that question would also involve the further question of whether plantation and capital allowances under Schedule 3 to the Income Tax Act, 1967, should be allowed. We considered that reference should therefore be made here to the provisions of section 42 of the Income Tax Act, 1967, and to the following words of Gill C.J. in the above-quoted case of Director-General v. A.L.B. Co. Sdn. Bhd. where His Lordship had said, "unabsorbed capital allowances, however, are governed by section 42 which provides that the statutory income of a person from a source for a year of assessment shall consist of an amount reduced by the amount of any allowances or the aggregate of the allowances falling to be made for that year under the Schedule in relation to that source."

It followed, therefore, that the capital allowances in respect of each of the Appellant's sources of income consisting of a business on each of its estates cannot be taken into account when computing the income from its other business sources at the Dagat timber concession and also at Tenggara.

(11) Finally we ought to record that Appellant's Counsel drew our attention to certain other provisions of the Income Tax Act, 1967, namely section 5(1)(c) and 12(1)(b) and 43(1)(a) of the said Act. He also mentioned sections 54(1)(a) and 60(2) of the said Act, and pointed out that the Legislature had, as shown in the kind of activities specified in those sections, provided in specific deeming provisions what activities should be treated as one or separate businesses. Pausing for a moment we would point out that in our view section 5(1)(c) of the said Act merely states that when ascertaining the adjusted income of a person from each source, either the adjusted income or adjusted loss could be ascertained in the case of a source consisting of a business. Section 12(1)(b) is concerned with the ascertainment of the gross income of a person in certain cases mentioned therein. Section 43(1)(a), in our opinion, confirms that a business could consist of one or more sources. With respect, we were not able to see how those sections could help to support the contentions of Counsel in this case. As regards section 54(1)(a) and 60(2), we were of the opinion that apart from the kind of activities specified in those sections, in all other kinds of activities, one must look at the facts of each individual case to decide whether upon those facts certain activities or operations constituted one or separate businesses and whether there were one or more sources of income.

Our attention was also drawn to paragraphs 7, 8 and 26 of Schedule 3 to the Income Tax Act, 1967, which all show that there could be a business "which consist wholly or partly" of one activity as the working of an estate. We have stated above that the Appellant's activities or operations on Litang Estate, Tomanggong Estate and Malubok Estate which consisted of timber logging and planting constituted one business. But it did not follow that the provisions in question are applicable to the Appellant's activities in the Dagat timber concession because the facts showed that they were not an integral

part of its business on those estates. Counsel for Appellant has correctly referred to paragraph 75 of the said Schedule 3 to the Act which governs the carrying forward of unabsorbed capital allowances in relation to "a source consisting of that business". In this case the capital allowances relate only to the Appellant's business on the said estates and cannot be taken into account for its business of timber logging at the Dagat timber concession. Because of an adjusted loss or by reason of an insufficiency or absence of adjusted income from the Appellant's business on its estates for the relevant basis years for the years of assessment in question, the unabsorbed capital allowances in relation to the source consisting of that business must therefore be carried forward in accordance with paragraph 75 of the said Schedule 3 to the Act to be made to the Appellant for the first subsequent year of assessment for the basis year for which there is sufficient adjusted income from that business.

(12) For the reasons stated above we therefore made the Deciding Order of 28th August, 1976, whereby we ordered the Director-General of Inland Revenue to give effect to our decision as set out in paragraph 3 of the said Deciding Order.

12. The Appellant by notice in a letter dated 6th September, 1976, required us to state a Case for the opinion of the High Court pursuant to paragraphs 34 and 35 of Schedule 5 to the Income Tax Act, 1967, which case we have stated and have signed accordingly.

13. The question for the opinion of the High Court is whether on the facts found and stated by us above, our decision was correct in law.

Dated this 20th day of October, 1976.

Sgd. (GUNN CHIT TUAN)
Chairman,
Special Commissioners of Income Tax.

Sgd. (T. SARAVANAMUTHU)
Special Commissioners of Income Tax.

Sgd. (TAN SRI LIM LEONG SENG)
Special Commissioners of Income Tax.

In the High Court in Borneo at Kota Kinabalu

No. 5

JUDGMENT

No. 5
Judgment of
B.T.H. Lee,J.

18th January 1980.

This is an appeal by the River Estates Sdn. Bhd. - the appellants herein - against the decision of the Special Commissioners of Income Tax - in this judgment called "Special Commissioners".

The Case Stated having set out the facts and submissions at length I do not propose to enter on a detailed description of all the relevant circumstances but some reference to the salient features of the case is necessary. The facts as to which there is no dispute as found by the Special Commissioners are these:-

(1) Litang Estate

Appellants acquired Litang Estate on Sungei Segama with a total area of 4,700 acres on which 1,000 were planted with rubber. The balance of 3,700 acres was virgin land on incorporation of the appellant company. Logging operations commenced in 1950 in the jungle reserve land on the said estate. In 1957 a rubber nursery was established there and 27 acres of a cleared reserve area, which had been planted with vegetables during the Japanese Occupation, were planted up with rubber in 1953. Between the years 1953 and 1964, the appellants planted 989 acres of rubber, 814 acres of cocoa and 500 acres of oil palm, but severe floods in 1963 and 1965 destroyed virtually all the planted area except 25 acres of oil palm and 619 acres of young rubber. Since then there has only been one small replant of 25 acres of Litang Estate.

(2) Bode Estate

This was acquired in 1950 with a total area of 900 acres all of which were planted with rubber.

(3) Dagat Estate

In 1952 appellant was given an annual licence to log timber at Dagat. It was his intention to plant bananas in this area but this never materialised since this piece of land was never alienated for plantation. Only timber operations were carried out in that area.

(4) Tomanggong Estate

In 1961 appellant acquired 10,025 acres of virgin land from Guthrie Corporation. This area is now known as Tomanggong Estate. Extraction of timber in this area commenced in late 1962 followed by planting of oil palm. By the end of 1964, 1,475 acres were planted but floods in 1965 destroyed 656 acres. Planting continued until 1969 and the appellant found that only about 3,000-3,500 acres of high land out of the 10,025 acres were suitable for planting. The appellant considered this area not to be an economic holding, so it applied to the Sabah State Government for the alienation of 6,454 acres of adjoining Forest Reserve land which was eventually alienated in 1969. The appellant progressively planted a total acreage of 8,382 acres with oil palm.

(5) Malubok Estate

Another area of 3,960 acres of largely jungle land, later known as Malubok Estate, was purchased by the appellant in mid 1959. By the end of 1962 the appellant had logged 1,500 acres and planted up 600 acres with cocoa and 100 acres with rubber. Floods in 1963 destroyed 600 acres of that newly planted area, as a result of which it was found that the area was not suitable for planting. The appellant subsequently abandoned this area after extracting all valuable timber in it.

(6) Tenggara

In 1965 the appellant was approached by North Borneo Timber Co. Bhd. to log for them on contract an area known as Tenggara in the Kretam Forest Reserve. The appellant agreed to work the area and was given a contract to extract timber. The appellant was paid at a fixed price per cubic foot of logs delivered to North Borneo Timber Co. Bhd. This contract terminated in 1969 when North Borneo Timber Co. Bhd. ceased logging in that area.

Upon the authority of Scales v. George Thompson & Co. 13 T.C. 83 which I think it unnecessary to state at any greater detail, I consider that the point is settled. The facts which are fully set out in the report of the case

before Rowlatt J. appear sufficiently for the purpose of this report from the headnote which reads :-

"The Respondent Company was incorporated in 1905 to take over as a going concern the business of George Thompson & Co., shipowners, ship and insurance brokers, underwriters and merchants. As regards their underwriting business the firm had been represented by two of their partners, who acted on behalf of the partnership as 'names' or members of a syndicate whose credit was used by an underwriting agent in underwriting risks at Lloyd's. The monetary deposit made at Lloyd's in respect of these two partners was transferred to the Company, but since Lloyd's will not recognise a company as a 'name', these two partners continued to act as nominees and agents of the Company, to which all underwriting profits were handed over, the Company being responsible for any losses. These profits were brought into the Company's accounts with those of the rest of their business.

In 1919 one of these nominees retired and in 1920 the other died, whereupon the underwriting business ceased. The Company claimed that the underwriting business was a business separate from their other activities and that it should be treated as a separate business in computing their liability. The Special Commissioners allowed their appeal.

Held, that the question was one of fact, and that there was evidence on which the Commissioners could come to their decision."

Rowlatt J. in the course of his speech said at pages 88 and 89 :-

"....This company carried on the business of underwriting. It also had a fleet of steamers. I cannot conceive two businesses that could be more easily separated than those two. They both have something to do with ships; that is all that can be said about them. One does not depend upon the other; they are not interlaced; they do not dovetail into each other, except that the people who are in them know about ships; but the actual

> conduct of the business shows no dovetailing of the one into the other at all. They might stop the underwriting; it does not affect the ships. They might stop the ships and it does not affect the underwriting. They might carry on underwriting in a country where there were no ships; except that it would not be commercially convenient; but the two things have nothing whatever to do with one another."

The second case cited in support of the Respondent's view is Commissioners of Inland Revenue v. Williamson Brothers 31 T.C. 370 on the same point.

It seems to be reasonably plain from the above two cases that though there is one company running two businesses if the fact could be established that there are two sources of income, it necessarily follows the two sources must be dealt with separately.

Counsel for the Appellant cited certain authorities which far from supporting the Appellant's case were clearly distinguishable (see pages 17-19 of the Case Stated).

The capital allowances claimed by the Appellant were in regard to expenditure incurred by the Appellant in the planting of rubber, cocoa and oil palm in the estate at Tomanggong and Litang.

From these facts there can be no doubt whatever that there are at least two pieces of land in which pure timber operation business, viz; logging on the land were carried out at Dagat and at Tenggara. For the relevant years of assessment the Appellant carried out pure timber operations business at Malubok Estate. On these three pieces of land - Dagat, Tenggara and Malubok - for the relevant years of business the operations were pure timber operations without any adulteration of plantation.

That being the position the Special Commissioners could not possibly have arrived at any other conclusion but that this is a business of timber operations which is a source of income.

All six pieces of land are situated in different areas, although adjoining each other. The point to note is that each estate can be

identified as being separate. It follows from that each place forms a source of income, each disconnected one from the other as was found by the Special Commissioners at page 4 of their Findings.

In respect of the other estate, viz; Litang Estate and Tomanggong, the plantation operations and the timber operations were carried out at the same place but not at the same time.

Since the Appellant had already one source of income from timber operations, as to which reference has been made, and another source of income from plantation business at Bode Estate, the timber operations and plantation operations could easily be separated in these two estates. The estates are not only situated at two different places but the timber operations and the plantation operations could easily be separated and the Special Commissioners have so found.

The logging operations at Dagat and Tenggara for North Borneo Timber Co. Bhd. are quite distinct and separate from plantation operations.

In that state of circumstances the question for the determination before this Court is whether upon the facts and in law the Appellant's timber and plantation operations constituted a single integral business as claimed by the Appellant or were two distinct sources or businesses, as claimed by the Revenue. To determine that question it will be necessary to quote the essential provisions of the Income Tax Act 1967 (briefly called "the Act") upon which the whole appeal turns.

The expression "source" is defined in Section 2 of the Act to mean "a source of income".

Section 5(1) of the Act (omitting the irrelevant parts) provides that the chargeable income of a person upon which tax is chargeable.....shall be ascertained in the following manner:-

(a) first, the basis period <u>for each of his sources</u>.....;

(b) next, his gross income from <u>each source</u>.....;

(c) next, his adjusted income from each source....; or in the case of a source consisting of a business, his adjusted income or adjusted loss from that source.....;

(d) next, his statutory income from each source.....;

(e) next, his aggregate income for that year and his total income for that year shall be ascertained.....;

(f) next, his chargeable income for that year shall be ascertained .....

Next Section 5(2) reads :-

"For the purposes of this Act, any income of a person from any source or sources, and any adjusted loss of a person from any source or sources consisting of a business may be ascertained for any period (including a year of assessment) notwithstanding that -

(a) the person in question may have ceased to possess that source or any of those sources prior to that period; or

(b) in that period that source of any of those sources may have ceased to produce gross income or may not have produced any gross income. "

It seems to me perfectly clear from Sections 5(1) and (2) that a person can also have several sources of his income.

Section 21(1) - omitting the irrelevant parts - of the Supplementary Income Tax (Amendment) Act, 1969 is in these terms :-

"Ascertainment of timber profit.

21.(1) The timber profit (if any) of a person from a source for a year of assessment (in this section referred to as the relevant year) shall consist of -

(a) such parts of the adjusted income

(in this section referred to as the adjusted timber profit) of that person from that source for the basis period for the relevant year as are attributable only to amounts included in the gross income of that person from that source for that period which are derived from timber operations; and

(b) .....

Provided that, in ascertaining the adjusted timber profit of that person for that period,

(a) a deduction which is made under the provisions of Chapter 4 of Part III of the principal Act from his gross income from that source for that period shall be made -

" (i) only if it is patently attributable to the timber operations in relation to that source; or

(ii) ... in an amount which bears the same proportion to that deduction as the amounts included in the gross income of that person from that source for that period which are derived from timber operations bear to the gross income of that person from that source for that period,...

(iii) .....

(b) where that person has a business source which consists partly of timber operations and partly of some other activity and in that period any timber of that part of the business which consists of timber operations is first used in any other part of the business, then an amount equal to -

(i) the market value of that timber....; or

(ii) the cost of bringing that timber.....

whichever is the less shall be treated as gross income derived from timber operations of that person from that business source for that period."

Quite clearly Section 21(1) envisages that a person can have a business with several sources. It is equally clear from the provisions of the Act that a person (which term includes a company) can have two sources of income and each is distinct from the other. Significantly enough the provisions mentioned of "each source" or "any source" or "that source".

On the part of the Respondent it was contended that the plantation is a separate and distinct source consisting of a business, the plantation allowance can only be made or allowed in relation to the source consisting of that business, viz; plantation.

The timber operation is another separate and distinct source of business and as such Counsel for Respondent argues that the capital allowances brought forward in the plantation, i.e. cocoa, palm oil and rubber business should not be allowed as against the profits from the timber business. That this is so is provided by Section 5(1)(c) of the Act which is in these terms :-

"5.(1) Subject to this Act, the chargeable income of a person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner -

(a) - (b) (irrelevant)

(c) next, his adjusted income from each source (or in the case of a source consisting of a business, his adjusted income or adjusted loss from that source) for the basis period for that year shall be ascertained in accordance with Chapter 4 of that Part."

The relevant provision referred to is found in Chapter 4 under the heading "Adjusted Income and Adjusted Loss" in Section 33(1) which reads :-

"33.(1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall

be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly or exclusively incurred during that period by that person in the production of gross income from that source, including....."

See Nathan v. F.C.T. (1918) 25 C.L.R. at page 183 where the passage reads :-

"The legislature in using the word 'source' means not a legal concept, but something which a practical man would regard as a real source of income. Legal concept must, of course, enter into the question when we have to consider to whom a given source of a given income is a practical hard matter of fact. "

Much the same thing was said in Rhodesia Metals Ltd. v. Tax Commissioner (South Africa) (1940) 3 AER 422 at page 426 :-

"Source means not a legal concept but something which a practical man would regard as a real source of income..... the ascertaining of the actual source is a practical hard matter of fact."

On examination of the facts it seems that the Appellant's logging and plantation operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a single business and the Special Commissioners gave as their reason that the logging operations on those estates were a prerequisite to planting.

In respect of the timber operations at Dagat timber concession, this was not alienated for agricultural purposes and was situated in a different area from Appellant's estates. It cannot therefore be an integral part of the Appellant's business on the estate in question.

Logging had taken place in two to three square miles of jungle land each year since 1953 on an annual licence and Appellant had made gross sales of timber therefrom amounting to some five million dollars per annum during the years 1967 to 1971. The annual licence was replaced with a twenty-one year licence which permitted the Appellant to extract only timber up to 1978. The Appellant had not applied for alienation of any land in the said timber concession for

agricultural purposes.

I am further fortified in the conclusion I have reached by reference to the Act in which Schedule 3 clearly distinguished the capital allowances for forest expenditure from the capital allowances for plantation expenditure.

Schedule 3 clearly distinguishes the two types of allowances, it follows that each source should be treated separately.

I am further confirmed in this view which I take by the Supplementary Income Tax Act - Act 54 which provides for timber operations under Part IV the heading of which reads "Timber Profits Tax".

It was however suggested in the argument before this Court that the Special Commissioners in the Case Stated effectively rested their decision in law on the case of Director-General of Inland Revenue v. American Leaf Blending (1975) 2 MLJ 26 shortly called in this judgment "ALB case" at page 15, 20 and 21 of the Case Stated. The decision of the Federal Court in that case was reversed by the Privy Council - see (1979) 1 MLJ 1. It is true that the Special Commissioners quoted the ALB Case but it is not strictly correct to say that the Special Commissioners in the Case Stated rested their decision in that case. The Special Commissioners at page 20, sub-paragraph (9), said and I quote :-

> "The facts of the case before us showed that the Appellant here had more than one business and what is more important, for the purposes of our Income Tax Act, more than one source of business."

The Appellant cannot say that the Special Commissioners had not reached a finding of fact based on the facts before them. (See Deciding Order of the Special Commissioners - Paragraph 3 at page 4). The ALB Case was decided upon its own particular facts and in the light of the circumstances disclosed. That case recognises that there could be more than one source, and room for overlapping from one source and another source. Furthermore it is concerned with deductions for losses and not with capital allowance, whereas the instant case deals with capital allowances, and so is distinguishable on its facts.

In the High Court in Borneo at Kota Kinabalu

No. 5
Judgment of B.T.H. Lee, J.
18th January 1980.
(continued)

The question for the determination of the Special Commissioners was whether upon the facts and in law the Appellant's timber and plantation operations were two distinct sources or businesses and this seems to me to be essentially a question of fact and of inference from the facts found proved by the Special Commissioners. It is my view that there was ample evidence on which they could find as they did. Those being the facts and those being the findings of the Special Commissioners I see no merit in the appeal.

It is an accepted principle and on the authorities that this Court can only disturb the findings of the Special Commissioners if they are without basis or without any evidence. The burden is on the Appellant to prove to the satisfaction of this Court that the evidence of the Special Commissioners are against the weight of evidence. One such authority is Edwards v. Bairstow & Harrison 36 T.C. 207. The Appellant has not however discharged the onus so cast upon him. The Court can see no good reason why the decision of the Special Commissioners should be disturbed. They arrived at clear and definite findings on the questions of fact and there was ample evidence to support these findings.

For the reasons I have endeavoured to state, this appeal is accordingly dismissed with costs.

Dated this 18th day of January 1980.

Kota Kinabalu Sgd. (Datuk B.T.H. Lee)
Judge
High Court in Borneo

Notes

1. Hearing held on 29th and 30th May 1979.

2. For Respondents: Encik Mokhtar bin Hj. Sidin assisted by Mr. Joseph Kong and Mr. Edward Chia of Inland Revenue Department.

3. For Appellants : Mr. S. Woodhull - M/s. Shearn Delamore & Co. and Drew & Napier, Advocates & Solicitors, 2 Benteng, Kuala Lumpur

Mr. Thomas Chia - M/s Shelley Yap, Chong & Chia Co., Advocates & Solicitors, P.O. Box 980, Kota Kinabalu
Mr. Richard Barnes

In the High Court in Borneo at Kota Kinabalu

No. 5
Judgment of B.T.H. Lee, J.
18th January 1980
(continued)

No. 6

O R D E R

In the High Court in Borneo at Kota Kinabalu

No. 6
Order of High Court
18th January 1980.

WHEREAS pursuant to paragraph 34 of Schedule 5 of the Income Tax Act, 1967, a case had been stated at the request of the Appellant by the Special Commissioners of Income Tax for the opinion of this Court:

AND WHEREAS the said case came on for hearing on the 29th day of May 1979:

AND UPON READING the same and UPON HEARING Mr. S. Woodhull of Counsel for the Appellant and Encik Mokhtar Sidin, Senior Federal Counsel for the Respondent IT WAS ORDERED that this case do stand adjourned for Judgement AND the same coming on for judgement this 18th day of January, 1980 in the presence of Mr. Richard Barnes of Counsel for the Appellant and Encik Sufardi Bin Haji Rijan, Federal Counsel for the Respondent:

THIS COURT IS OF OPINION that the determination of the Special Commissioners of Income Tax is correct AND IT IS ORDERED that the appeal be and is hereby dismissed and the Deciding Order of the Special Commissioners of Income Tax Dated the 28th day of August 1976 be and is hereby upheld AND IT IS LASTLY ORDERED that the Appellant do pay tax due to the Respondent within thirty days of this Order.

GIVEN under my hand and the Seal of the Court this 18th day of January, 1980.

Deputy Registrar
HIGH COURT IN BORNEO

No. 7

WRITTEN SUBMISSION OF THE APPELLANT

No. 7
Written Submission of the Appellant

1. The grounds of appeal are set out in pages 1-3 of the Appeal Record.

2. I would like to cover the arguments ranging over these grounds by stating at the outset that we are concerned with the Scheme of the Income Tax Act, 1967 and the construction that has been placed upon this Scheme with some degree of finality by the Privy Council in its decision in the American Leaf Blending Case (1979) 1 M.L.J. 1.

3. I feel I need state that when this appeal was before the Special Commissioners they did not have the benefit of the decision of the Privy Council in the American Leaf Blending Case. They relied heavily, if not almost exclusively, on the decision of this Honourable Court, a decision then the subject of a further pending appeal.

4. This point was made before His Lordship in the High Court. The Learned Judge dismissed the matter in a single paragraph (Appeal Record, page 88).

5. The grounds of decision of the Special Commissioners (who did not have the Judgment of the Privy Council before them) are set out in pages 17 - 28 of the Appeal Record.

6. In the American Leaf Blending Case - then reported and referred to by the Special Commissioners as Director-General of Inland Revenue v. A.L.B. Co. Sdn. Bhd. - the Commissioners were concerned with identifying sources or businesses, rather than considering the Scheme of the Act itself. To this extent they also cited with support the Rubber Trust Ltd. v. Director-General of Inland Revenue.

7. The American Leaf Blending Case (or D.G.I.R. v. A.L.B. as it then was) was cited by the Commissioners as authority for identifying a source or business (Appeal Record, page 19); as Malaysian authority, "apart from English cases, which are persuasive authorities".

8. His Lordship, Gill C.J.'s judgment is quoted by the Commissioners as approving authority, and they add the statement:-

"In that case (D.G.I.R. v. A.L.B.) the Respondent had ceased to carry on the tobacco business before its land and buildings were let out on rental to other companies. The facts of the case before us showed that the Appellant here had more than one business and what is more important, for the purposes of our Income Tax Act, more than one source of income. The Appellant's statutory income must, therefore, be calculated in accordance with Section 42 of the Income Tax Act, 1967, in respect of each of its sources of income."

9. The Judgment of Gill, C.J. is further cited by the Commissioners at page 25 in this appeal before they proceed to interpret certain sections of the Act, an interpretation, it is submitted with respect, that has received drastic revision before the Privy Council in the American Leaf Blending Case.

10. The point I regretfully seek to labour at this stage is that, in this appeal, the Special Commissioners sought to examine - and I say, quite rightly, and without irony - the case against their then understanding of the Scheme of the Income Tax Act with specific reference as to how the income from a company's business sources was to be finally treated for tax purposes, assuming in effect there was no distinction as between the United Kingdom charging provisions and authorities and the Malaysian Act, relying in point on the American Leaf Blending Case as it then stood decided by Your Lordship.

11. I say with respect that His Lordship, B.T.H. Lee, J, notwithstanding that the benefit of the Privy Council decision was available and urged in this Appeal, has appeared resolutely disinclined to consider its pertinence, let alone engage upon its impact, in the interpretation of our revenue law and, needless to say, the revenue law of Singapore.

12. My Lord, I feel constrained to state that the issue in this appeal, going to the very root of the construction of the Income Tax Act, 1967, is of deep and widespread concern to industry as a whole. Not only does it strike at the right to aggregation of losses and profits from all business sources (Section 43) but it threatens to throw all principles of commercial accounting into total disarray

13. To put the contending views in a nutshell, it may be stated that :-

(i) the Appellant holds that it has only one (1) business and that, in any event, even if there is more than one business the principle of aggregation requires to be applied;

(ii) the Revenue holds there are two (2) businesses i.e. timber and plantation, requiring separate assessibility to tax;

(iii) the Special Commissioners have found five (5) sources or businesses. The High Court appears to have upheld this finding.

FACTS

14. For ease of reference, I quote the Agreed Statement of Facts which is at pages 95 - 98 of the Appeal Record, marked Exhibit A1.

" Agreed Statement of Facts

(i) The appeal of The River Estates Sdn. Bhd. (hereinafter referred to as "the Appellant") is against the assessments of the Director-General of Inland Revenue (hereinafter referred to as "the Revenue") in respect of Additional Assessments raised under Notices dated the 15th December 1973 for the Years of Assessments 1969, 1970, 1971 and 1972.

(ii) The Appellant Company was registered in March 1950 and commenced business the same year.

(iii) The principal objects of the Company were, inter alia,

(a) the acquisition of any rubber, coffee, cocoa, coconut or other plantations; and

(b) the carrying on of the business of planters, growers and manufacturers of rubber, tobacco, coconut, copra, tea, coffee, cinchons, rice, tapioca, cocoa, cereals and other natural products of any kind.

(iv) The Appellant immediately upon its registration commenced business by acquiring two rubber estates in 1950 viz:

(a) Litang Estate with a total area of 4,700 acres of which 1,000 acres was planted with rubber; and

(b) Bode Estate of a total area of 900 acres of planted rubber with no reserve land.

(v) The head office of the Appellant was at Sandakan from where effective overall management and control of all its business operations was exercised. These included marketing of the Appellant's products, determination of sales policies and procedures, contracts of capital equipment and purchases of major items such as fuel, fertilisers and general stores.

(vi) The individual Estates of the Appellant held cash balances for payroll and similar operational disbursements and maintained, for central supervision, records in this specific connection.

(vii) Staff and equipment for the extraction of timber and consequential planting operations have been transferred from one location to another.

(viii) Assessments were raised for the four Years of Assessment 1968 - 1972 as follows :-

Date of Notice	Year of Assessment	Tax Assessed
26.5.69	1968	1,061,556
22.9.69	1969	46,649
23.1.71	1970	221,839
17.4.71	1971	495,000
30.3.72	1972	500

(ix) Following the Notices of Assessment referred to above the Revenue adopted the view that Appellant's estate or plantation operations were a separate source or business from its timber extraction operations and computing the adjusted income accordingly served the Appellant with Additional Notices of Assessments dated 15th December 1973 for the relevant years. viz

Year of Assessment	Additional Assessment
1968	$ 431,112
1969	356,253
1970	1,019,229
1971	90,790
1972	67,202

(x) The Appellant, following a failure of negotiations with the Revenue, appealed against the relevant Additional Assessments on the grounds that they were excessive in that the Appellant's chargeable income from its business has been incorrectly computed in that

(a) Plantation allowances due under Schedule 3; and

(b) capital allowances due under Schedule 3

of the Income Tax Act 1967, have not been deducted. The formal grounds of Appeal are set out in the prescribed Form Q dated 30th October, 1975.

(xi) It is the contention of the Revenue that the Appellant's timber operations and plantation operations constitute two separate sources or businesses and therefore disentitle the Appellant to the relevant allowances as claimed and set out under Form Q.

(xii) It is the contention of the Appellant that its timber and plantation operations constituted an integral part of its business entitling it to the relevant allowances claimed under Schedule 3.

(xiii) The computation of Chargeable Income for the relevant years of assessments as made by the Appellant and the Revenue are as follows:

	Appellant's Computation (One Source)	Revenue's Computation (Two Sources)
1968	$2,357,089	$3,317,040
1969	NIL	713,275
1970	389,336	2,076,023
1971	NIL	1,050,508
1972	NIL	80,656

(xiv) The question for the determination of the Special Commissioners is whether upon the facts and in law the Appellant's timber and plantations operations constituted a single integral business, as claimed by the Appellant, or were two distinct sources or business, as claimed by the Revenue."

15. The facts as found by the Special Commissioners are set out at pages 7 - 12 of the Appeal Record, and it is not intended to disturb those facts. It is not even intended to seek to argue upon inferences from facts - which is a question of law. I am addressing myself to the Scheme of the Act and thereby, I submit, to the inevitable treatment to chargeable income of the Appellant for all the relevant years of assessment.

SCHEME OF THE ACT

16. In essence, for a business, the Act provides for the determination of chargeable income, and the mode for this determination is summarised in Section 5. Chapters 1 - 7 of Part III of the Act (Sections 11 to 51).

17. Chapter 8 i.e. Sections 52 - 65 are those special cases e.g. insurance, shipping, etc., where a different mode and manner for the computation of assessable income is set out.

18. We are concerned with the Scheme as expressly provided for from Sections 11-51, a scheme whereby from the gross income we arrive at:-

(i) the adjusted income (Sections 35-41) after deduction of specific outgoings; thereafter

(ii) by way of capital allowances, the statutory income (Section 42); and then

(iii) the aggregate income from each of the sources consisting of a business, and finally

(iv) the chargeable income.

19. This is the express provision of the Scheme for the ascertainment of chargeable income a scheme that embodies the principle of aggregation as spelt out in Section 43.

20. Aggregation is required only in respect of sources consisting of a business. Where a source of income is not a business aggregation is not contemplated or required under Section 43.

21. It is submitted that this was the central summation of the judgement of the Privy Council in the American Leaf Blending Case.

22. In the American Leaf Blending Case, it was sought to off-set rental income against losses in a previous tobacco business, then defunct aggregation was allowed by the Privy Council on the strength that rental income was "a source consisting of a business" within the meaning of Section 43(1).

23. In this appeal there is no dispute that all income of the Appellant be it from timber, plantation or other sources, was income from "sources consisting of a business". There is also no denying that the Appellant is entitled to capital allowances in respect of each business or source consisting of a business.

24. What, however, the Revenue seeks to deny the Appellant is the right to aggregate his statutory income from all sources consisting of a business pursuant to Section 43(1), a denial notwithstanding the express provisions of the Section against the background of an equally express scheme for the ascertainment of chargeable income.

25. In the American Leaf Blending Case, Your Lordships were not moved to consider the crucial and operative phrase in Section 43: "a source consisting of a business".

26. The Privy Council has now done so in these words (page 2, last paragraph):-

> " S.43, under which adjusted losses from a business of the taxpayer for previous years of assessment (as ascertained under s.40) are to be deducted from the aggregate of the taxpayer's statutory income for any year for the purpose of ascertaining his chargeable income for that year, draws a distinction between income from "a source consisting of a business" and income from any other source. It is only against income from a source consisting of a business that adjusted losses from a business for previous years of assessment can be set off. The tax-

payer's business from which the previous loss was incurred, however, need not be the same business as that from which his statutory income for the year of assessment is derived. So the only question in this appeal is: Were the rents received by the Company for letting its premises or parts thereof to other persons for use for storage, income from "a source consisting of a business" for the purposes of s.43(1)(a) and (2) of the Act?"

27. In the American Leaf Blending Case, the Company had ceased its tobacco business. In fact the rental income arose as a result of the abandonment of the tobacco enterprise, not in pursuit of it. Yet, as Their Lordships held:-

> " What S.43(1) requires is that one should first determine whether the rents are income from a business. If they are, no further inquiry is necessary; adjusted losses from a business of the taxpayer for previous years of assessment are deductable in ascertaining the taxpayer's aggregate income. (Page 4)."

ENGLISH AUTHORITIES

28. Authorities under the United Kingdom Act have been cited and canvassed by both the Appellant and the Revenue in the courts below. I submit with respect that in effect this has served to confound rather than clarify the issue under appeal.

29. The English authorities turn upon the provisions of the U.K. Income Tax Act, enactments that relate to the Schedules which classify both the nature of the business and the rate of tax payable in respect of each Schedule.

30. We are here in Malaysia not subject to the U.K. arrangement or scheme. No classification or categorisation of business is required for the purposes of the tax computation or rate attaching to each Schedule.

31. In our case, the Scheme is expressly uniform, save for those special cases under Chapter VIII of Part III, i.e. Sections 52-65.

32. Nevertheless, if I may re-indulge myself in a hypothesis, with Your Lordships leave, I would venture the argument that even if the

Malaysian Income Tax Act, 1967, were made similar to the U.K. tax scheme for corporations the Appellant would still be regarded, on the basis of U.K. authorities, to have carried out a single business.

33. I take the liberty of indulging myself in this hypothetical situation for it lends support, a fortiori, to the treatment in favour of the Appellant's contention that there was only one business.

34. Your Lordships would observe that the Appellant immediately upon incorporation in 1950 acquired two properties (plantations, in fact) in Litang and Bode (Appeal Record, page 8 at E and F).

35. From the Agreed Facts (Appeal Record, pages 95-98) and the facts as found by the Special Commissioners (Appeal Record, page 6 at G - page 12 at G) it will be seen that not only were all the lands occupied by the Appellant brought into its business, but there was a utilisation and every intention to so utilise them for the purposes of their produce.

36. It is submitted that this activity of being in occupation of the land and harvesting the fruits of the land that requires all profits therefrom to be treated even on the basis of United Kingdom legislation as a single business.

37. In C.I.R. v. Williamson Brothers 31 T.C. 370, the Respondent firm which carried on a business as timber merchants and sawmillers purchased an estate which included 60 acres of woodlands. During the relevant tax period some of the timber was cut and removed to one of the firm's sawmills and subsequently sold.

38. The question that arose in the case was whether the Company's profits from timber sawmilled into pit-props and poles was referable to the occupation of the woodlands or to a separate and distinct operation unconnected with such occupation.

39. It was held on a Supplemental Case that the Company's profits from sawn timber at mills remote from the estate were referable to the occupation of the woodlands and not a separate and distinct operation unconnected with such occupation.

40. Lord Carmont in the case states at page 374:-

" But in matters of this kind no single fact should be taken in isolation, and it

may not be unimportant when other facts are kept in view in the present case, that the timber was transported a considerable distance to where the Respondents admittedly carry on a business where timber is processed and where the firm disposes of processed timber."

and further at page 375 :-

" The produce of the occupation of land may result in profit to an occupier who may carry on such a trade as husbandry with its annual or more frequent fruits derived from the soil or who may be content with the intermittent advantages to be derived from the planting of trees. The occupier may also take his profit from the rearing of animals or fowls and if these are on the land and in reasonable measure supported by it, the profits are none the less treated as having arisen from the occupation of land".

41. It is submitted that the Appellant in this case, upon all facts carries on the business or trade of an occupier of land, and the profits of the produce of land, be it out of timber, rubber, palm oil, bananas, etc., is a single business of the Appellant. And as Lord Carmont further observes at page 375 of Williamson's Case :-

" The nature of a business carried on by a trader may, I think cast some light on the question whether the profit of the commodity in which he trades is a profit from the occupation of land or not."

42. Lord Keith at page 378 in the case refers to the test of occupation as variously expressed e.g.

(i) In the words of Scrutton, L.J. (Black v. Daniels) whether there is "a separate and distinct operation unconnected with the occupation of land"; or

(ii) In the language of Lord Greene M.R. (Croft v. Syell Aerodrome Ltd.) whether the profit making operations are referable to a right of property in land or of occupation of land";

(iii) To follow the principle enunciated by their Lordships in Glanely v.

Wightman, "whether the operation or activity conducted is something distinct and separable from the purpose of occupation".

43. Lord Keith further adds at page 379:-

> " that in all cases the nature or character of the subject owned or occupied (either in its natural state or as modified by the hand of man) is to be kept in view in deciding whether the operations conducted are referable to the right of property or occupation, or to some outside activity of the nature of trade and that the use of land may vary infinitely according as the land is farm land, woodland, golf course, aerodrome, stud farm and so on".

44. The following U.K. authorities relate to the general principle of occupation of land and treatment of businesses referable to it upon the basis of the produce of land.

45. Apart and outside the reference to land, the courts have, with reference to U.K. legislation and with special regard to the facts, held different activities or operations as being part of a single business. This is in effect no more than an application of the general test of relation and integration of those activities and operations.

46. The case of Gloucester Railway Carriage etc. Ltd. v. C.I.R. 12 T.C. 720 was, in summary, a case where a company manufactured railway wagons for sale or letting them on simple hire.

47. The two activities i.e. sale on one hand and hire on the other, were separated in the accounts and treated as such. Warrington, L.J. summed the decision of the court in these words at p.744:-

> " There is here in my judgment a clear finding of fact that the Company carried on one trade only, that of manufacturing and dealing with wagons for the purposes of profit, and that selling and letting the wagons were nothing but two modes of earning profits in one trade."

48. There are numerous other authorities that may be cited in further support e.g.

(i) Laycock v. Freeman, Hardy & Willis 22 T.C. 288

(ii) Spiers & Son, Ltd. v. Ogden 17 T.C. 117

49. I need hardly emphasise that the English authorities I have cited relate to the different businesses as placed in the various Schedules in U.K. legislation. Yet even in terms of those specific provisions the courts have been most reluctant, even averse, to contrive into creation distinct or separate businesses.

50. We are, in this appeal, concerned primarily with the construction of our Income Tax Act, 1967. The charging provisions, particularly those relating to the ascertainment of chargeable income, are express and not open to doubt. I need hardly stress that it is a rule of revenue law that if the interpretation of a fiscal enactment is open to doubt, the construction most beneficial to the taxpayer should be adopted. (Atkinson v. Goodlass etc. 31 T.C. 447 at 462 (H.L.)). This rule - with which, I submit, we may not be concerned - has been applied even where the taxpayer may obtain "a double advantage". (Hughes v. Bank of New Zealand 21 T.C. 472).

SUMMARY

51. The decision of the High Court, Borneo, and that earlier of the Special Commissioners of Income Tax in the above appeal have a crucial bearing upon a taxpayer's liability, not just as to:-

(i) the quantum of tax payable; but also

(ii) the mode of its computation, with consequential involved accounting procedures that may have to be observed.

52. The decision turns upon the structure of the charging provisions of the Act in relation to a company's chargeable income arising from sources consisting of a business.

53. It will be noted that the chargeable income is arrived at after appropriate deductions (Section 5) from sources consisting of a business after determining the :-

(a) Adjusted Income;

(b) Statutory Income; and

(c) Aggregate Income.

54. The Respondent contends that losses or gains from one source or business, particularly in relation to capital allowances (statutory income), cannot be set-off against losses or gains from another source or business.

55. This rudimentary construction of the Income Tax Act was summarily put to rest by the recent decision of Privy Council in the American Leaf Blending Case (1979) 1 MLJ 1 where it was held that losses arising out of a tobacco business (one source) of a company may be set-off against its rental income (another source or business).

56. In this appeal, the point at issue turns upon the subject of capital allowances.

57. The Appellant was possessed of a few estates upon which it had cleared land of income-bearing timber prior to carrying out plantation activity. It had also carried out timber operations in two areas without planting upon land.

58. It is contended by the Appellant, upon the facts, that its timber operations and its plantation activity constitute one source or business.

59. It is contended by the Inland Revenue that there were two sources or businesses, namely, timber and plantation businesses.

60. The Special Commissioners of Income Tax and, now, the High Court, have held that there were five sources, viz

(i) three plantations were held to be separate businesses and each to constitute a separate source of income;

(ii) timber operations in a given area were held to be a distinct source and business;

(iii) specific contract to log timber for another company was yet another source or business.

61. It is submitted with respect that the manifest irrelevance in law and the latent absurdity of the decision emerges in the effect of the decision itself.

62. In the first instance, the Income Tax Act provides no helpful definition of the meaning of "source". On the basis of the decision of the High Court it is now open to the Inland Revenue to identify specific items of industry and physical areas of activity as constituting separate sources for which in respect of the chargeable income of a company separate computations would have to be made.

63. A company carrying on a single business e.g. plantation may now have its business split up into numerous sources if the plantation business is not made up of a contiguous estate, as is the case with most plantation companies.

64. Similarly each product or item of manufacture of a company may be identified as a separate source.

65. Apart from the effect on the mode of computing a company's chargeable income, the structure of the Income Tax Act itself requires the aggregation of income from each of the scources consisting of a business before determining the chargeable income. This was the substantive decision in the American Leaf Blending Case.

66. It should be noted that the Special Commissioners made their decision on the River Estates Appeal before the American Leaf Blending Case was decided by the Privy Council. It is understandable, therefore, why they should have placed considerable reliance on the decision of the Federal Court in the American Leaf Blending Case.

67. The High Court, now, in this Appeal, has in effect chosen to disregard the decision of the Privy Council.

68. The River Estates Appeal, it is submitted, takes on an importance of prime magnitude in regard to Revenue law in that :-

(i) the principle of aggregation as a penultimate step in the ascertainment of chargeable income from all sources requires to be confirmed;

(ii) in the light of the express provisions of Sections 22-51, the Revenue should be judicially restrained from determining sources

or businesses on the basis of items or areas of business activity.

69. For the foregoing reasons, Your Lordships are urged to allow this appeal with costs.

S. WOODHULL
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Kuala Lumpur.

No. 8

MEMORANDUM OF APPEAL

The River Estates Sdn. Bhd., the Appellant above-named appeals to the Federal Court against the whole of the decision of the Honourable Justice Datuk B.T.H. Lee given on the 18th day of January, 1980 on the following grounds:

1. The Learned Judge had failed to appreciate the effect of the general charging provisions of Section 4 of the Income Tax Act and the manner of ascertaining the chargeable income pursuant to Section 5 and in particular to Sections 43(1)(a) and 43(2).

2. The Learned Judge had erred in failing to apply the decision of the Judicial Committee of the Privy Council in the American Leaf Blending Co. Sdn.Bhd. v. Director-General of Inland Revenue (1979) 1 MLJ 1 with particular regard to the understanding of the term "a source consisting of a business".

3. The Learned Judge had erred in the interpretation of the Income Tax Act, 1967 in failing to appreciate and apply the principle of aggregation of income from all sources consisting of a business required under Section 43(1)(a) of the Income Tax Act.

4. The Learned Judge had chosen to reach his decision on the basis of United Kingdom authorities which refer to different modes of taxing classes of income as specified under United Kingdom taxing Schedules against which tax is assessable as distinct from the single mode provided under the Malaysian Income Tax Act, 1967 confirmed by the principle of aggregation under Section 43 and finally followed by the

Judicial Committee of the Privy Council in the American Leaf Blending Case.

5. The Learned Judge notwithstanding the express provisions of the Income Tax Act, 1967 had further misunderstood the concept of a source consisting of a business in holding that a company may have two distinct or separate businesses for the purposes of determining its chargeable income by imputing that tax was related to a source however arbitrarily identified.

6. The Learned Judge had further erred in extending the definition of a business or source to physically separate or non-contiguous areas of activity.

7. The Learned Judge had allowed himself to be detracted from the scheme of the Income Tax Act for the determination of chargeable income by alluding to timber profits payable in respect of timber operations under the Supplementary Income Tax Act, 1969.

8. The Learned Judge had failed to appreciate that while the onus of showing that income assessed to tax is exempt from or non-exigible to such tax lies with the Appellant, the burden is on the Respondent to show under what charging provisions of the Act the income or deduction is allowable or not allowable.

9. The Learned Judge had failed to understand that the facts as found by the Special Commissioners were all agreed upon as primary facts and that such further facts as found by the Special Commissioners were inferences from primary facts and that it was opened to the court to reverse or alter the inferences made if they were inconsistent with, contradictory to or unsupported by evidence or the finding of primary facts.

10. The Learned Judge had finally failed to observe and relate the grounds of the Deciding Order of the Special Commissioners when they relied upon the decision of the Federal Court in the American Leaf Blending Case, a decision that was subsequently reversed by the Judicial Committee of the Privy Council.

Dated this 21st day of February 1980.

Sgd.
.....
S. WOODHULL
Counsel For The Appellant.

In the Federal Court of Malaysia

Sgd.
.....
Solicitors For The Appellant
Shelley Yap Chong Chia & Co.,

No. 8
Memorandum of Appeal
21st February 1980.
(continued)

To : The Chief Registrar,
Federal Court,
Kuala Lumpur.

And To:
1. The Registrar,
High Court, Borneo,
Kota Kinabalu.

2. The Director-General of Inland Revenue,
Jalan Duta,
Kuala Lumpur,
Malaysia.

3. The Director-General of Inland Revenue,
Sabah.

In the Federal Court of Malaysia

No. 9

NOTES OF SUBMISSIONS

No. 9
Notes of Submissions recorded by Lee Hun Hoe C.J., Borneo

THURSDAY, 8TH MAY, 1980

11.20 a.m. Encik S. Woodhull (Encik Thomas Chia with him) for appellant

Encik Mokhtar bin Hj. Sidin (Encik Sufardi bin Rijan with him) for respondent.

APPELLANT.

Written Submissions.

Going through grounds.

Sections 5, 43(1)(a) and 43(2) of Income Tax Act.

American Leaf Blending Co. Case (1979) 1 M.L.J. 1.

Section 43(1)(a) of Income Tax Act.

Comparison between United Kingdom and Malaysian tax law.

Concept of sources.

Definition.

Timber profits?

Company has one business only and only one mode of computing.

Revenue - timber operation of company should be made separate and distinct from income from plantation.

Special Commissioners and learned Judge find five sources of revenues.

Appeal of importance to business on fundamental principles.

Dealt with written submissions.

Submit appeal be allowed.

RESPONDENT.

Section 5 of Income Tax Act.

Page 82 - Learned Judge appreciated point and dealt with it until page 88.

Several sources of several businesses.

Appellant's contention one business with several sources.

Our contention two businesses with several sources.

Special Commissioners found three businesses and five sources.

Plantation and timber operations.

Learned Judge had dealt with relevant parts of Income Tax provisions.

Learned Judge had dealt with American Leaf Blending case.

Pages 88 - 89 of Appeal Record - "It was however.....facts."

Learned Judge applied the decision of the Privy Council.

Privy Council recognised several sources of business and overlapping.

GROUND 4

Nothing in our Income Tax Act to say all must be in a single mode. American Leaf Blending case did not go that far.

Supplementary Income Tax Act, 1967 (Act 54).

Section 3(2) any inconsistency principal Act void.

Section 26 "The following.....
.....tax".

Section 19 "In this Part, unless..... 10
"income derived from timber operations".....
.....
"taxable timber profit".....
"timber profit".....
"timber operations".....
.....
.....timber."

If it is established they are doing timber operation then section 26 applies. 20

Computation would be under section 20, etc.

Submit learned Judge right in not disturbing decision of Special Commissioners.

No doubt U.K. provision is different from our provision.

Plantation operation principle Act applies.

Timber operation Supplementary Act applies.

GROUNDS 5 and 6

Separate sources.

Separate businesses. 30

No question of overlapping on plantation operation and timber operation as in the American Leaf Blending case.

So they must be treated separately.

Section 43 of the Principal Act could not be used for timber operation.

Section 26 of Supplementary Act not brought to learned Judge's notice.

APPELLANT.

My reply is that the Supplementary Act has no application at all.

RESPONDENT

Losses from plantation operation cannot be used to deduct from profit of timber operation.

Crux of the matter.

Submit that learned Judge was right in coming to right conclusion but for different reasons.

Submit two businesses involved plantation operation and timber operation.

APPELLANT.

Alarmed at my learned friend's submission on the Supplementary Act.

It is additional to the Income Tax Act. It is Supplementary Act. Hence it is so called.

From Chapters 1 - 7 to Part III every business pays tax notwithstanding nature of business.

In addition to Income Tax Act every company pays a development tax of 5% under the Supplementary Act.

In the case of a company carrying on timber operation or tin mining operation it pays an additional tax in respect of those operations. This is provided by section 20 of the Supplementary Act.

We are asked to ignore Income Tax Act as we are computing special tax.

Section 43 of Income Tax Act.

Aggregate income

Only one business no matter how many sources.

Different sources must be aggregate.

e.g. Petroleum Income Tax.

In the Federal Court of Malaysia

No. 9
Notes of Submissions recorded by Lee Hun Hoe C.J., Borneo
(continued)

COURT

C.A.V.

(Sgd) Lee Hun Hoe
Chief Justice (Borneo)
8.5.80.

MONDAY, 8TH SEPTEMBER, 1980

9.00 a.m.

Encik Thomas Chia for appellant

Encik Zulkifli Ahmad for respondent

COURT.

Judgment delivered.

Appeal dismissed with costs.

Deposit to respondent on account of taxed costs.

(Sgd) Lee Hun Hoe
Chief Justice (Borneo)
8.9.80.

In the Federal Court of Malaysia

No. 10

NOTES RECORDED BY SYED OTHMAN, F.J.

No.10
Notes recorded by Syed Othman F.J.

Kota Kinabalu

8th May, 1980

Woodhull (Thomas Chia with him) for appellant.

Mokhtar Sidin (Supardi Rijan with him) for respondent.

Woodhull - written submission. One mode of computing income. Rev. contend that income from timber separate from plantation. 5 different sources of income. Reads written submission.

Mokhtar - P/A Gr.1. Judge dealt with this ground. P.52 to 58. S.43(1) does not apply where there are several sources of income. One business - several sources. Revenue contention 2 businesses - several sources. Sp. Commissioners and Judge say 5 separate businesses - p.32 A/Record. Judge considered several provisions of the Act.

Gr. 2 - Ct. did consider American Leaf Blending Co. p.88-89. (1979) 1 MLJ p.2. In certain cases there may be overlapping. It recognises different classes of income.

Gr. 3 & 4 - Nothing in our Act - single mode - American does not go that far. It was a fact that appellant was carrying on 2 businesses. But one can be used to offset the loss of another. Part IV of Income Tax Act. Supplementary Income Tax Act 1967 - Act. 54.

S.3(2) Inconsistency provision of Income Tax Act void. Supplementary Act is dominant Act. S.26 Supplementary Act - important. Provisions not applicable. S.19 Sup. Act. Income from timber operations. One of the businesses was timber operation.

Gr. 4 - S.43 does not apply. Then S.26 comes into play (not brought out in the Ct. below). Judge right in rejecting S.43(1)(a) and upholding the finding of the Sp. Commissioners.

English authorities - our law may be different. Plantation business the principal Act applies. Timber business Supp. Act applies.

Grs. 5 & 6 - 2 businesses were 2 separate sources. No question of overlapping between plantation and timber. In American Blending there was overlapping. S.43 does not apply to timber operation. S.26 Supp. Act says so. Facts have been agreed upon. Losses from plantation operations cannot be used to deduct from the profits of timber operations. This is the crux of the whole matter.

Income tax form.

Judge was right in his conclusion though I am not with him as to reasons.

Woodhull - S.26 Supp. Act. This Act is additional to Income Tax Act. Act not dominant over Income Tax Act. Every company pays tax from Chap.I to VII notwithstanding the nature of the business. In addition every Co. pays 5% Development Tax. This comes under the Supp. Act. In case of Co. carrying timber or tin mining operation it pays additional tax in those operations. This is provided in S.20 Supp. Act. Income Tax computed in a different manner. Timber profit tax is computed according to Supp. Act - different from Income Tax. One business - many sources of income. Supp. Act not applicable for the purpose

In the Federal Court of Malaysia

No.10
Notes recorded by Syed Othman F.J.

of the Appeal. We have paid tax under Supp. Act in addition to ordinary Income Tax Act. S.43(1) statutory income.

Minor correction - one business - should be chargeable - different sources - must be aggregated. See Petroleum Income Tax - not supplementary Act.

C.A.V.

In the Federal Court of Malaysia

No. 11
Notes of Arguments recorded by Abdul Hamid, F.J.

No. 11

NOTES OF ARGUMENTS RECORDED BY ABDUL HAMID F.J.

Thursday, 8.5.1980.

Mr. Woodhull - with Cheah for Appellant

Mokhtar Sidin - with Sufardijan for Respondent

Written Submission :

Appellant's contention - one business - one mode of computing chargeable income.

Appeal - one of principle :

Encik Mokhtar Sidin -

Refers ground 1 - see p.82-88.

Says several sources and several businesses - not applicable.

Respondent's contention: Two businesses with several sources.

Found by Sp. Commission - 5 separate businesses - 5 sources.

Correction: 3 businesses and 5 sources.

ALB's case considered by Judge - p.88

Refers - 1979 1 MLJ 1 at p.2.

ALB's case - says that in certain cases there will be overlapping.

Grounds (3) and (4) :

Nothing in Act that all must be in a single mode. Refers Supplementary Income Tax Act - Act 54 1967 - S. 3(2) - referred.

Refers S.26 - inapplicability to timber profits tax.

Refers S.19 interpretation - agreed fact - one of businesses was timber operations.

See S.21 - ascertainment of timber profit:

10 L.J. right in rejecting S.43(1) of the Income Tax Act.

English authorities :

For timber operations - Supplementary Act applies.

Plantations - Main Act applies.

Grounds (5) and (6)

On facts - clear two businesses were carried on - no question of overlapping - must be treated separately.

20 Ground -

(7) - covered by (3) and (4).

S.43 of Act excluded by S.26 Supplementary Act.

Ground -

(8) - Losses from plantation cannot be deducted from profits in timber operations. If S.43 is not applicable - there is no way losses could be deducted from profits in timber operations.

Says - L.J. right in arriving at decision that he
30 did. There are at least two businesses.

Mr. Woodhull -

Supplementary Income Tax Act -

Tax additional to income tax not in lieu of.

Every Company pays tax in accordance with Part III - of Income Tax Act notwithstanding the nature of the business.

In the Federal Court of Malaysia

No. 11
Notes of Arguments recorded by Abdul Hamid, F.J.

(continued)

In addition - every Company pays 5% development tax. This is contained in Supplementary Act.

In case of Company carrying on timber operations - pays additional tax in respect of those operations - S.20 Supplementary (any income derived from timber operations).

Mode of arriving at tax is given in the Supplementary Act. Appellant is not in dispute as to timber profit tax.

Refers S.43 - Tax Act.

Says - whatever sources - there is only one business - there must be aggregation.

Reserve judgment.

Intd.

(ABDUL HAMID, F.J.)

Certified correct.

Sgd.
(A. J. Pereira)
Secretary to Judge.

30.9.1980

In the Federal Court of Malaysia

No. 12

JUDGMENT OF THE FEDERAL COURT

No. 12
Judgment of the Federal Court

8th September 1980

This appeal is against the decision of the learned Judge.

The facts are either agreed or not in dispute and may be set out shortly. Appellant company were registered in 1950 and commenced business the same year. The principal objects of the company, inter alia, were the acquisition of any rubber, coffee, cocoa, coconut or other plantations and the carrying out of the business of planters, growers and manufacturers of rubber and so forth. Immediately upon its registration appellant company commenced business by acquiring two rubber estates in 1950, namely,

(a) Litang Estate with a total of 4,700 acres of which 1,000 acres were planted with rubber; and

(b) Bode Estate with a total of 900 acres of planted rubber with no reserved land.

Subsequently, appellant company were involved in other estates such as Dagat Estate, Tomanggong Estate, Malubok Estate and Tenggara. It is sufficient to say that of these, no planting of any kind was carried on in two estates. One is Dagat Estate where the land was never alienated for plantation. It was gazetted as a forest reserve. Logging was carried on since 1952 by appellant company which were granted annual licence. Application to plant bananas was only made in 1967 but was rejected. Logging continues. The other is Tenggara. Appellant company were approached by North Borneo Timber Co. Bhd. in 1965, to log timber for them on contract. Appellant company were given a contract to extract timber and paid a fixed price per cubic foot of logs delivered to North Borneo Timber Co. Bhd. The contract terminated in 1969.

The head office of appellant company was at Sandakan from where effective overall management and control of all its business operations were exercised. These included marketing of appellant company's products, determination of sales policies and procedures, contracts for capital equipment and purchases of major items such as fuel, fertilisers and general stores. The individual estates of appellant company held cash balances for payroll and similar operational disbursements and maintained, for central supervision, records in this specific connection. Staff and equipment for the extraction of timber and consequential planting operations have been transferred from one location to another. Assessments were raised for the four years of assessment 1968-1972. Appellant company were served with notices for additional assessments in 1973 as the Revenue adopted the view that appellant company's estate or plantation operations were a separate source or business from their timber extraction operations and computed the adjusted income accordingly. The particulars of assessment are as follows:-

Year of Assessment	Tax Assessed	Additional Assessment
1968	1,061,556	431,112
1969	46,649	356,253
1970	221,839	1,019,229
1971	495,000	90,790
1972	500	67,202

The question for determination of the Special Commissioners is whether upon the facts and in law the appellant company's timber and plantation operations constituted a single integral business, as claimed by appellant, or were two distinct sources or businesses as claimed by the Revenue. The Special Commissioners decided that :-

(i) Appellant's operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a business and each estate was a separate source of income.

(ii) Appellant's timber operations at Dagat constituted another business and was another source of income.

(iii) Appellant's contract to log for the North Borneo Timber Co. Bhd. constituted another business and was another source of income.

The learned Judge upheld the decision of the Special Commissioners. Hence the appeal.

The contention of appellant is that, on the facts, its timber operations and plantation activities constitute one source of business. On the other hand, the Revenue says that the timber operations and plantation activities constitute two separate businesses. According to the deciding order of the Special Commissioners there are five sources of income.

In effect there were two main categories of business, namely, plantation activities (involving logging and extraction of timber) and timber operations (involving no planting). The first is where logging operation and extraction of timber are necessary in order to prepare the land for planting of rubber, oil palm, cocoa and so forth. In which case the timber operation and the plantation activity would constitute a single integrated business. Actually it is a business with two sources of income, one from timber operation and the other from plantation activity. This is so in respect of all estates managed by appellant except Dagat Estate and Tenggara. Dagat Estate and Tenggara each produced a source of income through its distinct and separate business of timber operations. As such, we consider that the two timber operations being both run by appellant, they should be treated as one separate business not involving any plantation

activity. It was not as if the timber operations were necessary to prepare the land for planting like the other estates. In the case of Dagat Estate appellant was carrying out a purely timber operation for which appellant reaped enormous profits. It was not argued before us that activity at Tenggara did not constitute timber operation. Timber operations were making such good profits that Government found it necessary to introduce supplementary tax law to siphon off excessive profit in the form of Supplementary Income Tax Act 1967.

We think a clear distinction must be made between the two categories of business of appellant company. Where timber operation was carried out to prepare land for plantation activity then the timber operation and plantation activity should be treated as one single integrated business of appellant company. But where appellant company carried out purely timber operations either on its own, under licensed or on contract not with the view of preparing the land for plantation activity then such timber operations must be treated as a separate business of appellant company. Such activities were purely timber operations. Profits made from such activities were from the business of timber operations, nothing to do with plantation activities at all. The fact that such operations were carried out by appellant company whose objects were planting and so forth and most of whose shareholders are planters by profession does not make a purely timber operation into a plantation business. No amount of camouflage could turn a purely timber operation business into a plantation business merely because the operator's main business is planting. We cannot see how it could be argued that appellant was not carrying on a separate business by its timber operations at Dagat and Tenggara. If it were so many people who belong to other professions but carrying out timber operations would advance the same argument.

It should be made clear that in American Leaf Blending Co. Sdn. Bhd. v. D.G.I.R.(1) appellant claimed it was entitled to set off against its income from the letting of its property the balance of unabsorbed capital allowances in respect of its tobacco manufacturing business. This claim was rejected by both the High Court and this Court. It was abandoned in the Privy Council. So, the only matter before the Privy Council was appellant's claim under s.43 to have deducted from the assessments on the appellant

(1) (1979) 1 MLJ 1

to income tax for 1968 and 1970 the unexhausted balance of adjusted losses incurred in carrying on its tobacco business between 1961 and 1964.

The various paragraphs of the charging section of the Income Tax Act 1967, i.e. section 4 are capable of overlapping. Although rents are referred to in paragraph (d) of section 4 they may nevertheless constitute income from a source consisting of a business if they are receivable in the course of carrying on a business of putting the taxpayer's property to profitable use by letting it out for rent. Under s.43(1) it is essential to find out whether rents are income from a business. If they are, no further argument is necessary; adjusted losses from a business of the taxpayer for previous years of assessment are deductible in ascertaining the taxpayer's aggregate income.

Appellant argued that they were concerned with the scheme of the Income Tax Act, 1967 which had been construed by the Privy Council in the American Leaf Blending Case (1). It was said that the Special Commissioners were concerned more with identifying sources or businesses rather than considering the scheme of the Act itself and that they relied wholly on the decisions to arrive at their conclusion. The decision of this Court in that case had since been set aside by the Privy Council. To say that the learned Judge did not comment on that case is really misleading. We need only refer to what was stated by the learned Judge at page 88 of the Appeal Record:-

> "it was however suggested in the argument before this Court that the Special Commissioners in the Case Stated effectively rested their decision in law on the case of Director-General of Inland Revenue v. American Leaf Blending (1975) 2 M.L.J. 26 shortly called in this judgment "ALB case" at page 15, 20 and 21 of the Case Stated. The decision of the Federal Court in that case was reversed by the Privy Council - see (1979) 1 M.L.J.1. It is true that the Special Commissioners quoted the ALB case but it is not strictly correct to say that the Special Commissioners in the Case Stated rested their decision in that case."

There is force in respondent's contention that the learned Judge in fact applied the decision of the Privy Council in the American Leaf Blending Case (1) which recognised several sources

(1) (1979) 1 M.L.J.1.

of business and room for overlapping. In the present case under appeal there is the added difficulty as the business of timber operation attracts the consideration of the Supplementary Income Tax Act, 1967. The learned Judge was correct to point out that the American Leaf Blending Case[1] was concerned with the deduction for adjusted losses and not of capital allowances. The present case under appeal is concerned with capital allowances. It is therefore distinguishable.

We are here dealing with a company, not Datuk Barrett who may be the major shareholder. Appellant company was formed to make profits for its shareholders. Any gainful use to which it puts any of its assets prima facie amounts to carrying on of a business. In the present case the evidence is such that it could not be disputed that appellant was carrying on purely timber operations on Dagat Estate on its own land and Tenggara for North Borneo Timbers on contract. It seems that in both cases the activities had nothing to do with plantation business but were carried out purely for profit.

On the evidence there is only one conclusion of fact on the American Leaf Blending Case[1] that any reasonable Commissioner would reach, viz., that there is no evidence to rebut the prima facie inference that during the relevant periods of assessment appellant was carrying on a business of letting out its premises for rent. Hence the Privy Council allowed the appeal by setting aside the order of this Court and restoring the order of the High Court in affirming the decision of the Commissioners.

No-one would dispute that a company can carry on one or more businesses. Whether appellant carried on a separate business during the relevant basis periods is a question of facts. The real question in the words of Rowlatt, J. in Scales v. George Thompson & Co. Ltd.[2] is "was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses".

American Leaf Blending Case[1] is probably relevant to the businesses carried on at Litang, Tomanggong and Malubok. In order to plant certain crops the ground has to be cleared. It would mean clearing virgin jungles by logging and extracting timbers. The sales of timber would bring in considerable profits which could assist the planting activities. So the process of logging

(1) (1979) 1 M.J.L.1
(2) 13 T.C.83

and extracting timber from the land before planting activities is treated as part of plantation business. But the operations at Dagat and Tenggara were distinct and separate. They had nothing to do with any planting activities on the land. In that sense the American Leaf Blending Case[1] is not relevent as it is concerned with adjusted losses rather than capital or plantation allowances. The timber operations carried on at Dagat and Tenggara form a separate business as distinguished from plantation activities carried on at Litang, Tomanggong and Malubok which form another separate business.

The facts of the case under appeal are distinguishable from the facts in Howden Boiler v. Armaments Co. Ltd.[3] where a firm of boiler makers embarking on the manufacture of shells during the First World War was held on the facts to have "carried on one business with two departments and not two businesses".

In addition to income tax charged under the Principal Act, i.e. the Income Tax Act, 1967, tax calculated under the Supplementary Income Tax Act, 1967 is charged on timber profit. The following definitions under Section 19 of the latter Act are applicable in calculating tax on timber profit.

> " 'income derived from timber operations includes all premiums, rents and tributes (by whatever name called) derived from timber operations, or from the granting or assignment of any rights, privileges, licences, or concessions (by whatever name called) for extraction of timber from a forest in Malaysia;
>
> 'relevant business' means any business which includes timber operations;
>
> 'taxable timber profit' means the taxable timber profit for a year of assessment ascertained in accordance with section 22;
>
> 'timber profit' means the timber profit ascertained in accordance with section 21;
>
> 'timber operations' means the extraction of timber from a forest in Malaysia or the granting or assignment of any rights, privileges, licences, or concessions (by whatever name called) for the extraction of such timber but does not include the processing, milling, sawing or manufacturing of the timber."

(3) (1924)9 T.C.205

Where a person carries on a business consisting purely of timber operations there is no problem in calculating tax. The problem arises when a person carries on more than one business. When a person has a source which consists partly of timber operations and partly of other activities and any timber from the former is first used in the latter during a basis period the lower of the cost or market value of such timber so used "shall be treated as gross income derived from timber operations of that person from that business source for that period."

"Timber profit" under the Supplementary Income Tax Act is equivalent to statutory income under the Income Tax Act. Some special provisions are really designed to prevent understatement of the taxable timber profit in order to avoid the supplementary tax e.g. timber may be used in another business to reduce gross income from timber operations but proviso (b) to section 21(1) of the Supplementary Income Tax Act prevents this.

Section 21 of the Supplementary Income Tax Act deals with allowable deductions. Allowances are to be allowed in full if "patently attributable to timber operations". It should be made clear that where an allowance falls to be made under paragraph 75 of Schedule 3 of the Principal Act which provides for an allowance to be wholly or partly carried forward where there is insufficient or no profit, such "carried forward" allowance may not be deducted from the calculation of the "timber profits". In other words, capital allowances, plantation allowances in respect of one business cannot be given as deductions in computing the income of another business. That is the purpose of paragraph 75 of Schedule 3. Furthermore, section 26 of the Supplementary Income Tax Act provides that certain provisions of the Principal Act, such as, sections 4, 5 and 43(1)(a) and (2) do not apply to timber profits tax.

Only revenue expenditure is allowed to be deducted from a source to ascertain adjusted income. Under Schedule 3 of the Principal Act capital allowances are given to a person who, in the pursuit of business, has incurred qualifying capital expenditure on, say, (a) plant and machinery; (b) industrial buildings; (c) plantations and (d) forests.

The allowances given are deducted in

ascertaining his statutory income from each business source. He must make a claim for capital allowances due at the time on filing his return. He can claim allowances only under any one of the above headings in respect of the same qualifying expenditure. For instance, if industrial building allowance has been claimed, no plantation allowance or any other allowance can be claimed in respect of the same expenditure.

Capital allowances are given in respect of each business which has incurred qualifying expenditure. For instance, in running a plantation a person would have to incur capital expenditure in:-

(i) clearing land for planting of approved crops;

(ii) planting approved crops on the land cleared;

(iii) constructing roads on the estate; and

(iv) constructing buildings in the estate for the welfare and the accommodation of those working in the estate.

By "estate" we mean not only plantation for growing approved crops only but land adjacent to or in the vicinity of that plantation which is occupied for the purpose of a business which consists wholly or partly of the working of that plantation.

In the same way a person, engaged in carrying on a business which consists wholly or partly of the extraction of timber under a concession or licence, is entitled to claim a capital allowance called "forest allowance". This allowance is given as he would incur capital expenditure in extracting timber in a forest by constructing:-

(a) roads; or

(b) buildings in the forest for the welfare and accommodation of persons employed in the extraction of timber.

Under paragraph 31 of Schedule 3 of the Principal Act, if a person ceases his business permanently in a certain year he can claim a forest allowance for that year any balance of qualifying forest expenditure not yet claimed as such allowance in that year. On the other hand, under paragraph 32 of the said Schedule 3 where such a person disposes of a forest, then, any allowance

which has been made to him is added back to his gross income as a "forest charge". A person having a concession or licence for timber extraction from a forest who assigns or transfers it or surrenders it for valuable consideration is taken to have disposed of a forest for the purpose of paragraph 32 of the said Schedule. We are not concerned with the disposal price as it has no bearing on the imposition of a "forest charge". In calculating the timber profits tax as mentioned earlier certain provisions of the Principal Act do not apply.

Since we agree with the Revenue that there are actually two separate businesses, we consider that the deciding order of the Special Commissioners should be varied, particularly in respect of Dagat and Tenggara by merging into one item. The deciding order should read as follows:-

(i) Appellant's operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a business and each estate was a separate source of income.

(ii) Appellant's timber operations at Dagat and Tenggara constituted another business and each was a separate source of income.

In other words, there were two separate businesses deriving income from five sources. Subject to this variation we would uphold the decision of both the Special Commissioners and the learned Judge. Accordingly, we would dismiss the appeal with costs. Deposit to respondent on account of taxed costs.

(Signed)
CHIEF JUSTICE,
BORNEO.

Kota Kinabalu,
8th September, 1980.

Notes:

1) Hearing of argument in Kota Kinabalu on Thursday, 8th May, 1980.

2) Counsel

Encik S. Woodhull (Encik Thomas Chia with him) for appellant.
Messrs. Shelley Yap Chong Chia & Co.

Encik Mokhtar bin Hj. Sidin (Encik Sufardi bin Rijan with him) for respondent
Senior Federal Counsel

No. 12
Judgment of the Federal Court

8th September 1980

(continued)

No. 13

O R D E R

No. 13
Order of the Federal Court

8th September 1980

THIS APPEAL coming on for hearing on the 8th day of May, 1980 in the presence of Encik S. Woodhull (Encik Thomas Chia with him) of Counsel for the Appellants and Encik Mokhtar bin Hj. Sidin (Encik Sufardi bin Rijan with him), Senior Federal Counsel on behalf of the Respondent AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Counsel for the Appellants and Counsel for the Respondent IT IS ORDERED that this Appeal be and is hereby dismissed. AND IT IS ORDERED that the Appellants do pay to the Respondent the costs of this Appeal as taxed by the proper officer of the Court.

AND IT IS LASTLY ORDERED that the Deposit of $500/- (Ringgit Five Hundred) paid into Court by the Appellants as security for costs of this appeal be paid to the Respondent on account of taxed costs.

GIVEN under my hand and the seal of the Court this 8th day of September, 1980.

Sgd.
SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA.

This Order is taken out by Messrs. Shearn Delamore & Co. whose address is No. 2 Benteng, Kuala Lumpur

No. 14

O R D E R

No.14
Order granting Final Leave to Appeal to His Majesty the Yang DiPertuan Agung

15th October 1981

UPON MOTION made unto Court this day by Encik S. Woodhull of Counsel for the Appellant abovenamed in the presence of Encik Suriyadi bin Halim Omar, Senior Federal Counsel for the Respondent abovenamed AND UPON READING the Notice of Motion dated the 1st day of August 1981 and the Affidavit of Encik S. Woodhull affirmed on the 1st day of August 1981 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Appellant abovenamed to appeal to His Majesty the Yang DiPertuan Agung from the decision of this Court given on the 8th day of September 1980.

AND IT IS ORDERED that the costs of and incidental to this application be cost in the cause.

GIVEN under my hand and the seal of the Court this 15th day of October 1981.

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA.

No. 19 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:

THE RIVER ESTATES Sdn. Bhd. — Appellant

- and -

THE DIRECTOR GENERAL OF INLAND REVENUE — Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

STEPHENSON HARWOOD,
Saddler's Hall,
Gutter Lane,
London, EC2V 6BS

Solicitors for the Respondent