



HIGH COURT OF AUSTRALIA

8 February 2017

COMMISSIONER OF STATE REVENUE v ACN 005 057 349 PTY LTD
[2017] HCA 6

Today the High Court unanimously allowed two appeals from a decision of the Court of Appeal of the Supreme Court of Victoria. The High Court held that the Commissioner of State Revenue ("the Commissioner") was not under a duty to issue amended land tax assessments and refund an excess amount of land tax that he had been paid.

From 1990 to 2002, the respondent in each appeal, an owner of two adjoining properties ("the taxpayer"), was assessed for land tax under the *Land Tax Act* 1958 (Vic) ("the LTA"). Each assessment was paid. In 2007, the taxpayer transferred the properties to a related company. In 2012, a senior revenue officer of the Commissioner informed that related company that an error had been detected in land tax assessments for 2008 to 2011 – one of the adjoining properties had been the subject of land tax twice ("the duplication error"). The taxpayer formed the view that the 1990 to 2002 assessments contained the same duplication error, and sought to lodge, out of time, objections to those assessments under s 24A of the LTA. The Commissioner refused to consider the objections. The taxpayer requested the Commissioner to issue amended assessments for 1990 to 2002 pursuant to s 19 of the LTA. That request was also refused.

The taxpayer commenced two proceedings in the Supreme Court of Victoria – the first sought mandamus to direct the Commissioner to issue amended assessments and to refund the excess amount with interest, and the second sought restitution of the excess amount with interest. The primary judge dismissed the first proceeding and, in the second, entered judgment for the Commissioner and otherwise dismissed the proceeding. The Court of Appeal allowed each appeal holding that, as the Commissioner knew alterations were necessary to ensure the completeness and accuracy of the assessments, he had a duty under s 19 of the LTA to issue amended assessments and refund the excess amount. The Court of Appeal also held that the Commissioner's duplication error deprived him of authority to retain the excess amount, and his refusal to issue amended assessments amounted to conscious maladministration. The Court of Appeal found that s 90AA of the LTA did not bar the proceedings, and made an order for mandamus directing the Commissioner to issue amended land tax assessments and to repay the excess amount to the taxpayer.

By grant of special leave, the Commissioner appealed to the High Court. The High Court held that s 19 did not impose any duty on the Commissioner to issue amended assessments and refund the excess amount. The Court rejected the Court of Appeal's construction of s 19, which it held elevated s 19 to a source of refund or recovery, independent of the LTA's objection and refund provisions. As the proceedings were for the refund or recovery of "tax paid under, or purportedly paid under," the LTA, s 90AA applied to bar the proceedings brought by the taxpayer. The Court held there was no basis for a finding of conscious maladministration, and, as payment of the excess amount discharged a debt, the Court rejected the taxpayer's contention that the Commissioner was unjustly enriched. The Court allowed each appeal and set aside the orders of the Court of Appeal in each proceeding.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*