

[HIGH COURT OF AUSTRALIA.]

MEARES . . . . . APPELLANT ;

AND

THE ACTING FEDERAL COMMISSIONER }  
OF TAXATION . . . . . } RESPONDENT.

H. C. OF A. *Income Tax—Assessment—Dividends from company—Payment out of accumulated*  
1917. *profits—Amount carried forward to credit of profit and loss account—Income Tax*  
~~~~~ *Assessment Act 1915-1916 (No. 34 of 1915—No. 39 of 1916), sec. 14 (b).*

MELBOURNE,  
Oct. 4, 5, 8.  
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The account kept by a company under the name of the “profit and loss account” did not show in respect of a particular year any sum brought forward from the preceding year or carried forward to the succeeding year but showed a sum of profit or loss confined to the current year and, as a balance, transferred to another account called an “appropriation account.” It was the latter account that showed the amount of accumulated profits brought forward from the preceding year, the amount paid as dividend and the amount carried forward to the succeeding year. For the year ending 30th June 1915 the dividend was larger than the amount of profit transferred from the so-called profit and loss account.

*Held*, that the amount appearing in the “appropriation account” for that year as accumulated profits brought forward from the preceding year was an amount “carried forward to the credit of the profit and loss account” within the meaning of the last proviso to sec. 14 (b), and therefore was not to be deemed to be accumulated income.

APPEAL from the Federal Commissioner of Taxation.

On an assessment of Richard Henry Meares for income tax for the year ending 30th June 1916, it appeared that his income for the year ending 30th June 1915 included a certain sum received by him as dividend from R. H. Meares & Co. Proprietary Ltd. The Company in its books kept two accounts called respectively the “profit



and loss account ” and the “ appropriation account.” The appropriation account for each year showed one sum representing accumulated profits brought forward from the preceding year, another sum representing profits transferred from the profit and loss account, a third sum representing a dividend paid and a fourth sum representing accumulated profits carried forward to the succeeding period. The profit and loss account for each year showed a sum representing the receipts for the year, another sum representing the expenses for the year and a third sum representing the balance transferred to the appropriation account. For the year ending 30th June 1915 the amount paid as dividend was larger than the amount of profit for the year. On those facts the taxpayer contended that part of the dividend received by him represented income of the Company accumulated before 1st July 1914, and that by virtue of the first proviso to sec. 14 (b) of the *Income Tax Assessment Act 1915-1916* that part should not be included as part of his income. The Commissioner contended that the dividend was paid out of an amount carried forward to the credit of the profit and loss account which amount, by reason of the last proviso to sec. 14 (b), was not to be deemed to be accumulated income, and he assessed the taxpayer accordingly. From that assessment the taxpayer appealed to the High Court, and the appeal now came on for hearing before Barton J.

*Schutt and Eager*, for the appellant.

*Starke and Mann*, for the respondent.

*Cur. adv. vult.*

BARTON J. Under sec. 14 (b) of the *Income Tax Assessment Act* the sum in question is a “ dividend ” or “ profit ” credited or paid to a shareholder : and without the provisos it would be part of the appellant’s income and assessable to taxation. But under the first proviso, if that were the only proviso, it would not be included in his income because prior to 1st July 1914 it was accumulated income of the Company, undistributed. But again, by the first three lines

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of the last proviso to the same section, it is not to be deemed accumulated income, and is therefore taxable, if it is part of "an amount carried forward by the Company to the credit of the profit and loss account."

The Commissioner has assessed this sum as part of an amount so carried forward: the appellant by his objection contests this position on the ground that the sum is not included in the profit and loss account of the Company.

It is in fact carried forward to the credit of an account kept by the Company under the name of the "appropriation account," and out of it dividends are paid and the balance carried over to the next year's account. If the appropriation account is not, or is not part of, "the profit and loss account" the appeal succeeds, but otherwise it fails. The question which arises is really this: Whether the proviso deals with fact or name, that is to say, whether it deals with something intended to reveal the true position of the Company, or whether it deals only with such portion of the transactions of the Company as is given a particular name by the accountant of that Company in its books and balance-sheet. The appellant maintains the latter proposition, and the Commissioner the former one.

Evidence was given as to what accountants understood by the profit and loss account of a company. Mr. Rankin described several methods, including that adopted in this instance. He said: "The methods I refer to all do the same thing. They are methods of convenience, and the same facts are presented in either case." I am not stating all the evidence, but only that which appears to me most worthy of note. Mr. Shackell, an accountant and auditor of twenty-six years' standing, says: "I take it that a profit and loss account includes the whole of the receipts and the whole of the expenditure, including any balance brought forward from the previous period and any unappropriated balance carried forward to the succeeding period." Mr. Sherlock, another accountant, of twenty years' experience, says that he agrees with the views of Mr. Shackell as to the area covered by a profit and loss account—with the meaning of that term as conveyed in the passage I have just read. Mr. Shackell also says: "A profit and loss account is not complete until it is shown what is done with the profits." That is really the material



question. He adds: "I must go to the appropriation account in the present case to find out what has been done with the profits, because here two accounts were kept, one of which is a profit and loss account relating to the transactions of the year, and any balance credited to that account was transferred to what is called an 'appropriation account' out of which dividends were paid, and the balance carried forward." It was contended that, because of that method of keeping the accounts, there was no "carry-forward" in the profit and loss account and, therefore, that the accumulated profit was not taxable. That again raises the question of which I have spoken, as to whether the taxability of a sum of this kind depends on the names given to the accounts kept by the company or whether it depends on the account or accounts showing the true position of the company. I am of the latter opinion. I think that "profit and loss account" as used in the proviso means that account which shows the profit and loss of the year, not merely confined to the year but including that which is brought over from the previous year, if there is any credit balance, and that which is carried over to the next year or other accounting period, if there is a balance—that is to say, to show the whole area of profit and loss you must have an account or accounts not only of the transactions of the period itself, but of moneys brought forward into, and carried forward from, that period, in order to show what the profit and loss really are—not the position for the year, but the actual present position of the company as the result of its transactions.

Mr. *Schutt*, for the appellant, argued with some subtlety that the profit and loss account of a company or firm, keeping reasonably accurate books, must mean just an account going by that name, that is, kept under that name by a competent person in control of the books, of course, with the assent of the company, which adopts his view. This I fear would be an entirely fallacious position. I think the thing meant is a profit and loss account which goes by that name as understood by accountants generally. I believe the accountants' statement that a profit and loss account includes one account or several accounts, by whatever name or names called in the books of the company, which single account or combined accounts is or are meant to show the position of the company financially as regards

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profit and loss on its transactions, including that balance which is brought over into the period and that which is carried forward out of the period.

Holding that opinion, I am bound to come to the conclusion that the appellant fails to make out his case, and I dismiss the appeal with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant, *Meares & Duigan*.  
Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

DUTTON . . . . . APPELLANT ;  
PLAINTIFF,  
  
AND  
  
GORTON AND OTHERS . . . . . RESPONDENTS.  
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

H. C. OF A.  
1916-1917.  
SYDNEY,  
Dec. 13-15,  
18-21, 1916;  
Aug. 31,  
1917.

*Company—Rights of minority of shareholders—Refusal of company to enforce its rights—Attempt of majority of shareholders to benefit themselves at expense of minority.*

In an action by a minority of the shareholders of the A Company, which owned a patent for a certain process, against certain other shareholders and the B Company, of which also those others were shareholders, claiming that the B Company might be restrained from infringing the patent, it was alleged that those other shareholders had obtained a majority of the votes in the A

Griffith C.J.,  
Barton, Isaacs,  
Gavan Duffy  
and Rich JJ.