

Carl Heinrich Schurr, such costs to be taxed by the Principal Registrar of this Court. Order that the costs of the said Carl Heinrich Schurr of this motion be paid by the Public Trustee out of any property paid to him in respect of the said Carl Heinrich Schurr to Messrs. Gair & Brahe, the solicitors of the said Carl Heinrich Schurr, such costs to be taxed by the Principal Registrar of this Court.

H. C. OF A.
1920.
—
IN RE
SCHURR;
EX PARTE
PUBLIC
TRUSTEE.
—

Solicitor for the Public Trustee, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.
Solicitors for Schurr, *Gair & Brahe*.

B. L.

[HIGH COURT OF AUSTRALIA.]

THORPE APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION) RESPONDENT.

War-time Profits Tax—Assessment—Profits—Business carried on for part of year—Apportionment of average profits—War-time Profits Tax Assessment Act 1917-1918 (No. 33 of 1917—No. 40 of 1918), secs. 7, 14 (2), 16 (2).

H. C. OF A.
1920.
—
MELBOURNE,
March 10.
—
Knox C.J.,
Gavan Duffy
and Starke JJ.

Sec. 16 (2) of the *War-time Profits Tax Assessment Act 1917-1918* provides that “Where the profits on which the war-time profits tax is to be assessed are for a period less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.”

Held, that the word “period” there refers to the “accounting period” mentioned in sec. 7, and the sub-section applies to a case where a business has been carried on by a taxpayer for a portion only of the accounting period and has then been sold to another person.

H. C. OF A. CASE STATED.

1920.

THORPE
v.
FEDERAL
COMMISSIONER OF
TAXATION.

On an appeal to the High Court by William Townsend Thorpe from an assessment of him by the Federal Commissioner of Taxation for war-time profits tax, *Starke J.* stated the following case for the opinion of the Full Court :—

1. The appellant at all times material to this case has resided in the State of Tasmania.

2. The appellant furnished to the Commissioner the returns required by the *War-time Profits Tax Assessment Act* 1917. The accounts of the appellant's business had been made up and accepted for the purposes of the *Income Tax Assessment Act* to 31st December in each year.

3. By such returns it appears that the profits of the appellant's business for the years ending 31st December 1912 and 31st December 1913, selected by the appellant under sec. 16 (3), were £1,489 and £2566 respectively, and that the average profits of the said years were £2,027 10s. It also appears by the said returns that the profits of the appellant's business for the year ending 31st December 1915 were £3,161.

4. The appellant's business was formed into a limited liability company in January 1916, the whole of the shares being held by the appellant and the members of his family.

5. The Commissioner assessed the appellant as follows :—

Profits of accounting period made			
up for purposes of income tax			
12 months ending 31/12/15 ..	£3,161	0	0
Proportion derived during period			
1/7/15 and 31/12/15—one-half		£1,580	10 0
Average profits for year 1912-1913	2,027	10	0
Proportionate reduction of average			
profits under sec. 16 (2)—one-			
half	1,013	15	0
Federal income tax	73	8	10
		1,087	3 10
			£493 6 2

6. The appellant objected to the said assessment, claiming that

the assessment should (apart from deductions not material) be made on the figures following, viz., profit standard, £2,027 10s. ; profit of accounting period, £1,580 10s. : and objected that sec. 16 (2) was not applicable to his case, but that the full year's profits standard should be applied.

7. The Commissioner disallowed the appellant's objections mentioned in par. 6, and the parties agreed that the said notice of objection should be and the same was treated as an appeal and forwarded to this Court pursuant to sec. 28.

8. On the hearing of the appeal the following questions, which in my opinion are questions of law, have arisen, which I state for the opinion of the High Court :—

- (1) Whether the method of assessment adopted by the Commissioner was correct.
- (2) Whether the provisions of the *War-time Profits Tax Assessment Act* 1917-1918, sec. 16 (2), are applicable to the facts herein stated.
- (3) Upon what principle and upon what sums should the appellant be assessed for the accounting period ?

Owen Dixon (with him *Shelton*), for the appellant. Sec. 16 (2) of the *War-time Profits Tax Assessment Act* does not apply to this case. The word "period" in that sub-section means "financial year," and not "accounting period" referred to in sec. 7. The tax in every case is on the profits arising in the financial year, and those profits are ascertained by reference to the profits of the accounting period. The Commissioner's view proceeds on the assumption that under sec. 14 (2) he was authorized to tax the profits of the accounting period instead of those of the financial year. What the Commissioner might have done under sec. 14 (2) was to assess the company which took over the business in respect of the profits of the business for the whole financial year, or to tax the appellant in respect of the profits made during the portion of the financial year which had elapsed before he sold to the company, but taking them to be the whole of his profits for the financial year. Sec. 16 (2) is meant to meet the possible case of Parliament by the taxing Act imposing the tax for a portion of the financial year only.

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THORPE
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TAXATION.

KNOX C.J.

Pigott, for the respondent. The word "period" in sec. 16 (2) means the "accounting period," which is the only period spoken of in sec. 14 (2).

KNOX C.J. It is said by Mr. *Dixon* that if the words of sec. 16 (2) of the *War-time Profits Tax Assessment Act*, properly construed, are applicable to the facts of this case, the assessment by the Commissioner is correct. I feel no doubt that the words are so applicable, and in my opinion they were put in the section to meet a case of this kind. The only "period" spoken of in the Act, so far as I am aware, is the "accounting period." Where the Legislature meant the "financial year," those words are used. Moreover, the option given to the Commissioner in sec. 14 (2) would be to a great extent useless on any other construction of sec. 16 (2) than that adopted by the Commissioner in making this assessment.

The answers to the questions should be: (1) Yes; (2) Yes; (3) Not answered.

GAVAN DUFFY and STARKE JJ. concurred.

Questions answered (1) Yes; (2) Yes; (3)
Not answered.

Solicitors for the appellant, *Lynch, McDonald & Elliott*, for *Simmons, Wolfhagen, Simmons & Walsh*, Hobart.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.