[HIGH COURT OF AUSTRALIA.]

NORTH AUSTRALIAN PASTORAL COMPANY LIMITED . . . . . } APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1946.

MELBOURNE, *June* 3-5, 19.

Dixon J.

Income Tax (Cth.)—Assessment—Exemption—Resident of Northern Territory—Income from primary production—Pastoral company, where "resident"—Rebate on dividends—Income Tax Assessment Act 1936-1944 (*No.* 27 *of* 1936—*No.* 28 *of* 1944), *ss.* 23 (*m*), 46 (3).

A company may have a dual residence for fiscal purposes and may be resident in the place where it is incorporated and has its registered office, if that is where it carries on its business undertaking, although at the same time it is also resident elsewhere at the place in which the directors meet and its central control is exercised.

The taxpayer company was incorporated in the Northern Territory. Its business was the breeding, purchasing, depasturing and selling of cattle upon and from its cattle station, "Alexandria," in the territory. At all material times its registered office was at "Alexandria," but, under a power in its articles, it established a branch office at Brisbane. During the two financial years beginning 1st July 1939 and ending 30th June 1941 all meetings of the directors and shareholders were held at the Brisbane office, where the secretary (who resided in Brisbane) kept the common seal and share register. Then a new secretary, who resided at "Alexandria," was appointed, and the seal and share register were transferred into his custody there. The books of account were kept at "Alexandria," but a duplicate accounting was carried out at the Brisbane office. Entries relating to cash, banking and dividends originated in Brisbane and the remainder at "Alexandria." The chief bank account was in Brisbane, but there was another at Cloncurry for the use of the station. The issued share capital was held by about twenty-six persons, of whom some resided in England, some in Victoria, some in Tasmania and some in Queensland. There were seven directors, of whom five resided in Queensland, one in Tasmania and one in England, the last-mentioned being represented by an alternate who resided in Brisbane. Until May 1943 F.,

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who lived near Brisbane, was managing director, and the station was managed under the control of a manager, B., a non-shareholder, who resided there. Then B. was appointed managing director and became a shareholder. F. became chairman of directors. Business transacted on the company's behalf in Brisbane consisted of (1) things necessarily done by an agent, e.g., buying a truck and a lighting plant, buying bulls, effecting insurances, interviewing authorities about renewal of leases, and (2) things needing the authority of the directors, e.g., fixing the seal to documents, approving of transfers of shares, arranging and watching the overdraft, appointing a secretary and recommending dividends. The more important questions concerning the management of the station rested primarily with the manager, but visits were made by some of the directors to "Alexandria," and decisions of policy were arrived at with him. The company was assessed to Federal income tax on income of the four income years beginning 1st July 1939 and ending 30th June 1943 which, the Commissioner admitted, was derived directly and in the first place from primary production in the territory.

Held that throughout the relevant period the company was a "resident" of the Northern Territory within the meaning of s. 23 (*m*) of the *Income Tax Assessment Act* 1936-1944, even if, for part of the period, it was also a "resident" of Queensland. Accordingly, the income in question was exempt income under s. 23.

Principles in accordance with which the "residence" of a company for purposes of income tax is determined, considered.

The meaning and effect of s. 46 (3) of the *Income Tax Assessment Act* 1936-1944, considered.

APPEALS under *Income Tax Assessment Act.*

These were four appeals by the Northern Australian Pastoral Co. Ltd. from assessments to Federal income tax. The appeals were heard together. The facts appear in the judgment hereunder.

Coppel K.C. and *Spicer*, for the appellant.

Tait K.C. and *D. I. Menzies*, for the respondent.

Cur. adv. vult.

June 19. DIXON J. delivered the following written judgment :—

These are four appeals, heard together, from assessments under the *Income Tax Assessment Act* 1936 as amended.

The assessments relate to the four consecutive financial years beginning 1st July 1940 and ending 30th June 1944 and are respectively based on income derived during the immediately preceding twelve-monthly periods, that is to say, they are based on the four income-tax years beginning 1st July 1939 and ending 30th June 1943.

The appellant is a company incorporated in the Northern Territory. The appeal for the first, third and fourth of these years concerns the company's ordinary assessment. The appeal for the second year concerns the company's assessment under s. 104 for the aggregate amount of tax which would have been payable by its shareholders if the company had paid them as a dividend the undistributed amount of its income. But the chief objection made to the assessments is common to them all. It arises under s. 23 (*m*) of the *Income Tax Assessment Act*, which provides that there shall be exempt from income tax income derived prior to 1st July 1947 directly and in the first place from primary production, mining or fisheries in the Northern Territory of Australia by a resident of that Territory.

The business of the company is the breeding, purchasing, depasturing and selling of cattle upon and from an extensive cattle station in the Northern Territory and a large part of its income is derived from that source.

It is conceded that these operations constitute primary production and it is expressly admitted that the income of the appellant company assessed to income tax by the assessments under appeal, excepting dividends from other companies, was derived directly and in the first place from primary production in the Northern Territory.

What is in dispute is that the appellant company is a resident of that Territory.

The company's cattle station, which is called "Alexandria," consists of five leaseholds containing in all about 11,200 square miles and is situated wholly within the Northern Territory, being as I understand it on the Barkly Tableland about 160 miles north-west of Camooweal. The country is not suitable for fattening and the company sells its stock as store cattle. There is a homestead station and there are two fully equipped outstations. The company employs at Alexandria an average of about forty-two whites and thirty-two aboriginals. Alexandria was taken over from a partnership by the company, which was incorporated for the purpose in 1931 under the laws of the Northern Territory. The registered office of the company has always been at Alexandria, but the articles of association empower the directors from time to time to establish any branch office or agencies at such place or places as they may determine, and, from the beginning, a branch office was established in Brisbane. Until the end of the second of the four years of income with which the appeals are concerned, that is, the year of income ending 30th June 1941, the meetings of the directors and of the shareholders were always held

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at the Brisbane branch office and there the secretary kept the common seal of the company and its share register. But, in order to be more certain that the company qualified for the exemption as a resident of the Northern Territory, from that time onwards the meetings of the directors and of the shareholders were called at the registered office at Alexandria. At the same time a new secretary was appointed who resided there and the seal and the share register were transferred thither into his custody. This was done upon advice that had been sophisticated by a reading of the decision in *Koitaki Para Rubber Estates Ltd.* v. *Federal Commissioner of Taxation* (1). The new secretary had been the public officer of the company for some years and he had been the accountant responsible for the clerical side of the station management. The books of account of the company had always been kept at Alexandria, but a duplicate accounting was carried out at the Brisbane branch office. Entries relating to cash, banking and dividends would originate in Brisbane and the remainder at Alexandria. Complete accounts of the company were thus kept at Alexandria, both before and after Alexandria became the place where the secretary resided and held the seal and the share register and where the members and directors of the company met. The chief bank account of the company was in Brisbane, but there was another at Cloncurry for the use of the station.

The issued share capital of the company amounts to £162,000 and was held by about twenty-five or twenty-six persons, some in England, some in Victoria, some in Tasmania and some in Queensland. There were seven directors of whom five resided in Queensland, one in Tasmania and one in England. The latter was represented by an alternate who resided in Brisbane. Until May 1943, Mr. D. M. Fraser, who lived about 35 miles from Brisbane, was managing director of the company, and the station was managed under the control of a manager, named Barnes, who was not a shareholder. But, in May 1943, Mr. Barnes, who, of course, lived at Alexandria, was appointed managing director of the company and became a shareholder. Mr. Fraser then became chairman of directors.

Before 1934 the company appears to have sold its cattle into South Australia, but, as this proved unsatisfactory, it was determined to acquire the control of a pastoral company which would buy the cattle from Alexandria for fattening. Accordingly, in that year, the appellant company acquired the shares in Marion Downs Pty. Ltd. which owned a station in south-western Queensland. The cattle were then sold regularly to the Marion Downs Company. But, as the Marion Downs station proved of insufficient capacity for the

(1) (1940) 64 C.L.R. 15; (1941) 64 C.L.R. 241.

appellant company's output of store cattle, it was decided, in 1939, to obtain control of another pastoral company. Accordingly, the appellant company acquired the shares of the Monkira Pastoral Co. Ltd. That company owns two stations in the neighbourhood, more or less, of Marion Downs. These transactions gave the appellant company shares in the first company, of a par value of £75,000, and in the second company, of a par value of £82,000. The appellant company also held shares in the Queensland Meat Export Co. valued at £4,050 and in the Australian Stock Breeders Co. valued at £2,700. Apart from the station Alexandria and the stock, equipment and plant thereon, these were the company's assets.

The branch office in Brisbane became the registered office of Marion Downs Pty. Ltd. and Monkira Pastoral Co. Ltd. and the cost of a small clerical staff seems to have been distributed among the three companies.

Mr. Frith, a director of the appellant company, acted as pastoral inspector for these and other interests in which Mr. Fraser had a part and the two gentlemen were, no doubt, the members of the directorate who took the most active part in its concerns. But I do not think that the affairs of the appellant company demanded a great part of their attention. The business transacted on its behalf in Brisbane fell under two chief descriptions ; first, the kind of thing that must be done by some agent or another for a station situated in any remoter part of Australia, e.g. buying a truck, a lighting plant, buying bulls, effecting insurances, interviewing some authority about the renewal of leases, and, second, the kind of thing needing the authority of directors, such as fixing the seal to documents, approving of transfers of shares, arranging and watching the overdraft, appointing a secretary and recommending dividends.

The more important questions concerning the management of the station necessarily rested primarily with the manager, but visits were made by some of the directors to Alexandria and decisions of policy were arrived at in conjunction with him. A visit of this kind to which some importance was attached was made just before the opening of the periods now in question, namely in May 1939. Mr. Frith paid another such visit in July 1940, or thereabouts. In July 1941, Mr. Fraser and Mr. Frith were there and meetings of the directors were held, and, in November of that year, two other directors went up. After that there was a long interval, to be explained, it is said, by the difficulty of obtaining permission to enter the Northern Territory at that stage of the war. But, in April and May 1943, there was another visit and a meeting of directors was held at Alexandria.

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For the commissioner, much stress was laid upon the fact that Mr. Fraser's business qualities, coupled with his probable influence in the counsels of the directors and with his not inconsiderable proprietary interests, gave him a preponderating authority which he exercised whether he or Mr. Barnes was the titular managing director.

The question whose individual will guides an incorporated body is, of course, always an intangible one, but, if it matters, I should suppose that his fellow directors did always rely upon Mr. Fraser to watch the affairs of the company and that he did so. But I do not think that the criterion of corporate residence which looks to the place where the effective control of a company's operations is exercised means that a search is to be conducted for the person or persons whose will is most likely to prevail in any matter affecting the company. If he is found and identified his residence and the company's are yet two different things. In *John Hood & Co. Ltd.* v. *Magee* (1) there was a company which *Gibson* J. described as " an unusually perfect specimen of one-man type." The eponymous John Hood had, by the constating instruments, exclusive and complete control of the company, which bought and treated merchandise in Belfast and there prepared it for export to America and sold it in the markets of that country, where Mr. Hood dwelt. But the company was registered in Ireland and had its office in Belfast and the general meetings of the few shareholders were held there and Mr. Hood visited Belfast to conduct the formal and official proceedings of the company. *Gibson* J. said :—" The residence of the company cannot be determined by Mr. Hood's choice of his own residence. No doubt, wherever he went, he carried his functions with him. He might have gone for health to Davos or Colorado for two years and equally controlled the business from his new home, either personally or through managers in New York and the agents appointed by him. All the same, he was not the company, it owned his brain and capacity as well as the business. The tap-root of the fruit-bearing tree was at Belfast " (2). And, accordingly, the Divisional Court consisting of *Gibson*, *Madden* and *Kenny* JJ. held that the residence of the company was in Ireland.

There are no less than six decisions of the House of Lords dealing directly with the tests for ascertaining whether, for income-tax purposes, an incorporated company is a resident of a given country : viz., *De Beers Consolidated Mines Ltd.* v. *Howe* (3) ; *American Thread Co.* v. *Joyce* (4) ; *New Zealand Shipping Co. Ltd.* v. *Thew* (5) ;

(1) (1918) 7 Tax Cas. 327, at p. 346.
(2) (1918) 7 Tax Cas., at p. 350.
(3) (1906) A.C. 455 ; 5 Tax Cas. 198.
(4) (1912) 106 L.T. 171 ; 6 Tax Cas. 1 ; (1913) 6 Tax Cas. 163.
(5) (1922) 8 Tax Cas. 208.

Bradbury v. *English Sewing Cotton Co. Ltd.* (1); *Swedish Central Railway Co. Ltd.* v. *Thompson* (2) and *Egyptian Delta Land and Investment Co. Ltd.* v. *Todd* (3). There are three others indirectly bearing upon the same question, viz.: *San Paulo* (*Brazilian*) *Railway Co. Ltd.* v. *Carter* (4); *Egyptian Hotels Ltd.* v. *Mitchell* (5) and *Daimler Co. Ltd.* v. *Continental Tyre and Rubber Co.* (*Great Britain*) *Ltd.* (6).

More recently the ground has been gone over in this Court: *Koitaki Para Rubber Estates Ltd.* v. *Federal Commissioner of Taxation* (7).

The effect of the decisions of the House of Lords has been much discussed, more particularly the question what are the true grounds upon which to reconcile the decision in the case of *Egyptian Delta Land and Investment Co. Ltd.* v. *Todd* (3) with that in the *Swedish Central Railway Co. Ltd.'s Case* (2): See Dr. *Farnsworth's* monograph on the *Residence and Domicil of Corporations*, ch. 4, and his earlier paper on the same subject, *Law Quarterly Review*, vol. 51, p. 684, and the *Report of the Income Tax Codification Committee* (1936), vol. 1, pp. 39-45; *Konstam, The Law of Income Tax* (1940), 8th ed., p. 99.

For the purpose of the present case it is, perhaps, enough for me to add the following remarks.

In the first place, it is well to remember that the basal principle is that a company resides where its real business is carried on and that it is for the purpose of ascertaining where that is that the subsidiary principle is invoked that the place where the superior direction and control is exercised determines where the real business is carried on. The latter principle was found relevant in the *San Paulo* (*Brazilian*) *Railway Co. Ltd.'s Case* (4), not to residence, which was admitted, but to the distinction between profits from carrying on a trade and income arising from a business considered as a possession abroad. In the *Egyptian Delta Land and Investment Co. Ltd.'s Case* (8) Lord *Sumner* says:—"The analogy that is really possible between a natural person and a company is that of carrying on business at a place, great or small, and in my opinion, for the purpose of income tax, both on the words of the Acts and on the cases, the residence of a foreign company is preponderantly, if not exclusively, determined by this kind of fact."

(1) (1923) A.C. 744; 8 Tax Cas. 481.
(2) (1925) A.C. 495; 9 Tax Cas. 342.
(3) (1929) A.C. 1; 14 Tax Cas. 119.
(4) (1896) A.C. 31; 3 Tax Cas. 407.
(5) (1912) 6 Tax Cas. 152; (1915) A.C. 1022; 6 Tax Cas. 542.
(6) (1916) 2 A.C. 307.
(7) (1940) 64 C.L.R. 15; (1941) 64 C.L.R. 241.
(8) (1929) A.C., at p. 12; 14 Tax Cas., at p. 140.

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In the second place, the tendency to treat the matter as altogether a question of degree and of fact has increased; and this, I think, more than anything else accounts for the supposed variance between the conclusions of the House of Lords in the *Swedish Central Railway Co. Ltd.'s Case* (1), where the Commissioners found in favour of residence, and in the *Egyptian Delta Land and Investment Co. Ltd.'s Case* (2), where they found against residence, the decision of the House in each case being that it was a finding involving no error of law.

In the third place, it is instructive to notice what the elements were in the *Swedish Central Railway Co. Ltd.'s Case* (1) which, in their Lordships' opinion, were sufficient to warrant the conclusion that the company was a resident of the United Kingdom. The company was incorporated under the *Companies Acts* (Imp.) and had its registered office in London. The objects of the company were to acquire a concession for a railway in Sweden and to construct and work the railway. After some years they leased the railway to a Swedish company at an annual rent. The case stated (3) said that alterations had been made in the company's articles framed with the object of removing the control and management of the business of the company from England to Sweden and that the commissioners were satisfied that the business of the company had been and was then controlled and managed from Stockholm. All dividends had been declared in Sweden; no part of the profits had been transmitted to England, except to pay dividends to English shareholders. The members and directors met in Sweden, but three members of the board were appointed, pursuant to a provision in the articles, to be a committee to deal in London with transfers of shares in the United Kingdom, to attach the seal to share and stock certificates and to sign cheques on the London bank account. The committee was empowered to transact merely formal administrative business in the United Kingdom. The secretary resided in London and the seal was kept at the registered office there. Transfers of shares were made and registered and the accounts were made up and audited in London. The commissioners found that the real control and management of the company was in Sweden. They, nevertheless, decided that the company was resident in the United Kingdom. In upholding this decision, the House of Lords treated the case as one of dual residence.

In spite of the uncompromising terms in which the commissioners expressed their finding upon the place of control, the ground for treating the case as one of dual residence has been thought to be that

(1) (1925) A.C. 495; 9 Tax Cas. 342.
(2) (1929) A.C. 1; 14 Tax Cas. 119.
(3) (1925) A.C., at pp. 499, 500; 9 Tax Cas., at pp. 343-347.

the control and management was divided between Stockholm and London. The basis of this interpretation of the decision lies in an observation of Lord *Cave* :—" The central management and control of a company may be divided, and it may 'keep house and do business' in more than one place ; and if so, it may have more than one residence " (1). Unfortunately it is not clear whether the Lord Chancellor made the observation by way of illustration or as applicable to the facts before him. But, perhaps, it remains true that, if there is a complete removal of all management from the country of incorporation, the country where the registered office is situated, and there is no exercise there, however occasional or however small, of the superior directing or controlling authority, the residence must be held to be elsewhere. The *Egyptian Delta Land and Investment Co. Ltd.'s Case* (2) certainly holds that in those circumstances a tribunal of fact is entitled to hold that the company has no residence in the country of incorporation, unless that decision is to be treated as depending on the inference to be drawn from the special provision of rule 7 of the All Schedule Rules.

In the fourth place, the judgments in the six cases I have mentioned both in the House of Lords and in the Court of Appeal disclose marked differences of opinion concerning the force of incorporation and the establishment of a registered office as determining residence. The view adopted or preferred by Lord *Buckmaster*, Lord *Warrington*, *Sargant* L.J., *P. O. Lawrence* L.J. and also *Buckley* L.J. (3) that incorporation and registered office are decisive or conclusive in the case of a British company has been finally rejected in *Egyptian Delta Land and Investment Co. Ltd.* v. *Todd* (2). They are matters to be taken into consideration, but the use to be made of them or the weight to be attached to them have not been explained very clearly and the phrases employed concerning them differ. In his often-quoted judgment in the cases of *Calcutta Jute Mills Co. Ltd.* v. *Nicholson* (4) and *Cesena Sulphur Co. Ltd.* v. *Nicholson* (5) *Huddleston* B. said :—" Registration, like the birth of an individual, is a fact which must be taken into consideration in determining the question of residence. It may be a strong circumstance, but it is only a circumstance. It would be idle to say that in the case of an individual the birth was conclusive of the residence. So drawing an analogy between a natural and an artificial person, you may say in the case of a corporation the place of its registration is the place of its birth, and is a fact to be considered with all the others. If you find that a company

(1) (1925) A.C., at p. 501 ; 9 Tax Cas., at p. 373.
(2) (1929) A.C. 1 ; 14 Tax Cas. 119.
(3) (1915) 6 Tax Cas. 542 at p. 544
(4) (1876) L.R. 1 Ex. 437.
(5) (1876) L.R. 1 Ex. D. 428 ; 1 Tax Cas. 88.

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which is registered in a particular country, acts in that country, has its office and receives dividends in that country, you may say that those facts, coupled with the registration, lead you to the conclusion that its residence is in that country " (1).

In *New Zealand Shipping Co. Ltd.* v. *Thew* (2) Lord *Buckmaster* said :—" Now it has long been held that in order to determine whether a company is resident in one place or in another the registered office of the company is only an incident in the evidence." Upon this statement *Warrington* L.J. in the *Swedish Central Railway Co. Ltd.'s Case* (3) remarks :—" What has in fact been said is that the place of incorporation is only an incident ; the difference is material because in the cases of foreign companies the only fact found was the incorporation abroad, and there was no evidence as to any provisions of the foreign law as to the registered office." Afterwards, in *Egyptian Delta Land and Investment Co. Ltd.* v. *Todd* (4), Lord *Buckmaster* dealt with the question and cited the foregoing passage from the judgment of *Huddleston* B. as expressing the rule.

In the fifth place, it is to be remarked that the definition of " resident " contained in s. 6 of the *Income Tax Assessment Act* makes in relation to residence in Australia the fact of incorporation in Australia conclusive. The definition has no direct application to s. 23 (*m*), and I, therefore, do not rely upon it. But in *Koitaki Para Rubber Estates Ltd.* v. *Federal Commissioner of Taxation* (5) *Starke* J. described the definition as a provision which gives the legislative conception of residence as applied to a company for the purposes of income tax ; and, upon this view, it might be said that it amounts to a statutory indication of an adherence to the view preferred by the five very learned Chancery Judges I have named, that incorporation under our law is decisive of residence.

Finally, I shall set out the propositions which were deduced by the Codification Committee from their study of the authorities. They say in their Report (p. 40) :—" In addition to the principle that a company can have more than one place of residence, the case law on the subject of residence of companies seems to establish the following principles :—

(1) a company controlled in the United Kingdom is resident in the United Kingdom ;

(2) in the case of a British registered company, the establishment of a registered office in the United Kingdom and compliance with the other statutory obligations is not, of itself, sufficient to constitute

(1) (1876) L.R. 1 Ex., at p. 453.
(2) (1922) 8 Tax Cas. 208, at p. 229.
(3) (1924) 9 Tax Cas., at p. 363.
(4) (1929) A.C., at p. 36 ; 14 Tax Cas. 119.
(5) (1941) 64 C.L.R., at p. 247.

residence (see *Egyptian Delta Land and Investment Co. Ltd.* v. *Todd* (1)) ;

(3) registration, though not of itself a sufficient test of residence, is a circumstance, and a strong circumstance, to be taken into consideration, and, if coupled with other activities in the country of registration, may well lead to the conclusion that the company is resident in that country (*Cesena Sulphur Co. Ltd.* v. *Nicholson* (2) ; *Swedish Central Railway Co. Ltd.* v. *Thompson* (3)) ;

(4) the test to be applied in the case of a foreign company cannot be different from that applicable in the case of a British company (*Egyptian Delta Land and Investment Co. Ltd.* v. *Todd* (1) ".

Turning now to the facts affecting the place where the North Australian Pastoral Company was resident, I am quite prepared to concede that during the earlier two years of the period in question the use made of the branch office in Brisbane as a place of meeting for directors and shareholders and for the administration of the company and for the exertions of higher directing authority would suffice to give the company a residence in Queensland. But I think that this does not exclude the possibility of the company being a resident of the Northern Territory during those two years as well as in the later two years.

My conclusion is that the company was a resident of the Northern Territory during the whole period.

The undertaking, for the carrying on of which the company came into existence, is wholly within the Territory. The company takes its corporate life from registration in the Territory. And both by its registered office and its public officer for legal and fiscal purposes, it there lives its formal and ostensible life. These are three salient facts. There are certain other fairly obvious considerations to be added to these facts. One of them is that it was not to facilitate the conduct of the company's affairs that the directors met in Brisbane, but because that was for their common convenience the most convenient course. Another is that the seal, the share register and the secretary naturally followed the directors. Then, on the other side, the station manager necessarily took the initial responsibility in everything that most really affected the success or failure of the company's undertaking and the visits of the directors were an acknowledgment of the necessity of reaching the more important decisions of policy in or after consultation with him and of forming an opinion about them on the place where the business was conducted. These visits meant the occasional exercise of the superior

(1) (1929) A.C. 1 ; 14 Tax Cas. 119.
(2) (1876) 1 Ex. D. 428; 1 Tax Cas. 88.
(3) (1925) A.C. 495 ; 9 Tax Cas. 342.

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controlling authority where the business was carried on. A circumstance which perhaps points to the common conception of where the affairs of the company were naturally centred is the practice of keeping not merely station accounts at Alexandria but a full set of books for the company. The company's enterprise was not a financial or trading business the control and management of which might be considered to depend on decisions of policy and upon the judgment and capacity of the general manager independently of the locality. It was essentially localized. There has not been a case so far in which, although the place where the substantial business of a company is carried on is the same as that of its incorporation and its formal life, the company has been held not to reside there.

I do not think that the facts of the present case are such as to lead to an inference of that character. I, therefore, find that throughout the four years of income the appellant company was a resident of the Northern Territory. This means that all four appeals succeed and that in the first, third and fourth appeals the income derived from the operations upon and in connection with Alexandria must be excluded.

In the second appeal, that relating to an assessment under s. 104, it means that the assessment should be quashed. For, if the income from the Northern Territory is exempted, the taxable income is reduced to an amount which was in fact distributed among the shareholders. In reference to this assessment, an alternative ground of objection was relied upon. It was that a deduction had not been made of taxes paid in the year of income as required by s. 103 (1), definition of " distributable income." A payment had been made in the year of income on account of the tax to which the company had become exposed in respect of the income derived in the immediately preceding year, but at the time of payment the company had not been assessed to such tax and it was not so assessed before the year expired. In these circumstances it was a question whether it could be said to be a tax paid within the year of income. The commissioner considered that it was not.

As the assessment is to be quashed it is unnecessary for me to decide the question.

What I have said disposes of the substantial questions upon which the appeals turned. But there remains a minor matter which must be dealt with.

In the fourth of the years with which the appeals are concerned a special question has been raised under s. 46, affecting, it is true, a small amount. In calculating the rebate upon dividends allowed to the taxpayer company under s. 46 (1), the commissioner has deducted a sum of fifty-three pounds as the " estimated costs of collection

etc." This he claims to do under sub-s. (3) of s. 46 which now runs as follows :—" The part of the dividends so included in the taxable income of the shareholder shall be the amount remaining after deducting from the amount of dividends included in its assessable income deductions allowable to it under this Act from income from dividends."

It is evident from the bare reading of this provision that it supposes that a deduction is authorized from dividends and therefore directs correspondingly that it must be made from the rebate. Formerly the sub-section used the pronouns " his " and " him " where " its " and " it " now stand. At that stage the explanation of the provision was clear. It related to s. 50 (*a*) and required a deduction from the rebate correlative with that which s. 50 (*a*) required to be made from the dividend. It still seems plain enough that the sub-section means only to deduct from the rebate what has been deducted from the dividends in arriving at the taxable income on which has been calculated the tax obtaining the benefit of the rebate.

In the assessment now under consideration neither the amount of fifty-three pounds nor any other amount has been allowed by way of specific deduction from the dividends in ascertaining the taxable income. But the commissioner maintains that the fact that no deduction has been allowed to the taxpayer company from the income from dividends specifically is of no importance. His contention is that it is enough that the general expenses of conducting the business have been allowed against the assessable income from all sources. Overheads and administrative expenses must, on his view, be attributed to every part of the revenue of the company and some proportion must, therefore, be borne by the dividends. In addition, the directors, it is said, concerned themselves in the profitable conduct of the business of the companies paying the dividends, which were subsidiary companies, that is to say, Marion Downs Pty. Ltd. and Monkira Pastoral Co. Ltd. This last suggestion seems beside the point. For the companies paying the dividends are independent entities taxable as such and no deduction would be allowed in the appellant's assessment for expenses incurred by the appellant for the purpose of the earning of profits for those companies. But this is only a supporting argument and the substance of the contention is that a reasonable estimate of the proportion of the deductions allowed as the operating expenses of the company which ought to be attributed to the dividends is one per cent upon the amount of the dividends and that it is unnecessary that there should be any specific connection between the dividends and the expenses. I do not so

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read sub-s. (3) of s. 46. But, in any event, upon the evidence fifty-three pounds is an unreasonably large sum to attribute to the dividends. All that was involved in connection with the dividends was to receive cheques, indorse them and pay them in. I am, therefore, of opinion that the deduction of fifty-three pounds cannot be supported.

Allow the appeals with costs. Declare that within the meaning of s. 23 (*m*) *the appellant company was a resident of the Northern Territory of Australia during each of the years of income ended* 30*th June* 1940, 1941, 1942 *and* 1943. *Declare that the principle upon which the deduction of fifty-three pounds pursuant to s.* 46 (3) *of the Income Tax Assessment Act* 1936-1944 *in arriving at the rebate in the assessment for the financial year ended* 30*th June* 1944 *is estimated and made is erroneous and that the sum is excessive. Remit the ordinary assessments upon the appellant company for the financial years ended* 30*th June* 1941, 1943 *and* 1944 *for re-assessment in conformity with the foregoing declarations. Quash the assessment No.* 8711 *of* 28*th July* 1944 *based on the year of income ended* 30*th June* 1942 *of the aggregate additional amount of tax for which the appellant company was alleged to be liable under Part III., Division* 7, *of the Income Tax Assessment Act* 1936 *as amended.*

Solicitors for the appellant, *Arthur Robinson & Co.*

Solicitor for the respondent, *H. F. E. Whitlam,* Crown Solicitor for the Commonwealth.

E. F. H.