WHITE

v.

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA.

O R D E R.

Appeal allowed with costs.

Declare that by reason of the provision of s. 170 of the Income Tax Assessment Act 1936-1942 the Commissioner was not empowered to make the amendment of the appellant's assessment referred to in the notice of amended assessment dated the 7th September 1944.

Order that the said amendment be set aside accordingly.

WHITE

v.

THE COMMISSIONER OF TAXATION

JUDGMENT

KITTO J.

WHITE

v.

THE COMMISSIONER OF TAXATION

JUDGMENT KITTO J.

The proceeding before me is an appeal instituted by the forwarding to this Court by the Commissioner of Taxation, at the request of a taxpayer, of an objection to an amended assessment of income tax under the provisions of the Income Tax Assessment Act 1936-1942 (C'wlth). The amended assessment related to income derived by the appellant during the year ended 30th June 1942, and notice of it was issued to the appellant on 7th September 1944. The appellant's objection was lodged on 29th September 1944, and was disallowed by the Commissioner on 16th December 1947. On 21st January 1948 the appellant requested that the objection be treated as an appeal and forwarded to this Court. The request was complied with on 9th May 1952.

In his return in respect of the relevant year the appellant disclosed income both from personal exertion and from property. The income from property which he disclosed included dividends amounting to £5,800 from Rowden Pty. Ltd., a company incorporated in Victoria. That company held shares in two companies incorporated in Canada, namely Dulolo Gold Dredging Limited (which will be referred to as Dulolo) and Placer Development Limited (which will be called Placer), and dividends in respect of these shares constituted the whole of the income of Rowden Pty. Ltd. No claim was made in the

return or otherwise that any portion of the dividends paid by Rowden Pty. Ltd. was excluded from the appellant's assessable income by virtue of any provision of s. 44(2) of the Income Tax Assessment Act or was for any reason exempt income. In previous years, however, dividends received by the appellant from Rowden Pty. Ltd. had been excluded by virtue of para. (i) of s. 44(2)(b), which had provided that the assessable income of a shareholder should not include dividends paid wholly and exclusively out of the amount remaining after deducting from income derived from sources out of Australia (not being assessable income of the company) any loans or outgoings incurred in gaining or producing that income which would have been allowable deductions if that income had been assessable income. The dividends of Rowden Pty. Ltd. which had been treated as falling within this provision had been paid by that company out of dividends which Bulolo and Placer had paid wholly and exclusively out of income derived by them from sources out of Australia.

During the year which is here in question, the year ended 30th June 1942, the Income Tax Assessment Act was amended by the Act No. 38 of 1941. S. 7 of that amending Act repealed para. (i) of s. 44(2)(b) of the principal Act, except insofar as it applied to dividends declared prior to 30th October 1941. The appellant's return did not show the dates on which his dividends from Rowden Pty. Ltd. were declared or out of what moneys they had been paid; but the Commissioner, as the appellant knew, had before him certain information on these points in the returns furnished in respect of the same year and the previous year by Rowden Pty. Ltd. That company's return for the year ended 30th June 1942 showed that one dividend of £3400 had been declared on 3rd July 1941 and paid out of profits of the year ended 30th June 1941, and that a second dividend, also of £3400, had been declared on 24th December 1941 and paid out of profits of the year ended 30th

June 1942. From this return and the return of the previous year it appeared, as is conceded to be the fact, that the profits of the two years out of which these two dividends were paid consisted wholly of dividends received by Rowden Pty. Ltd. from Bulolo and Placer. (The appellant, it should be stated, was the beneficial owner of all the issued shares in Rowden Pty. Ltd., and that is why, as his own return showed, his income included the whole amount of the two dividends, namely £6800.) So the information before the Commissioner was that while one-half of the £6800 derived by the appellant for Rowden Pty. Ltd. consisted of a dividend declared before 30th October 1941 and falling, as its predecessors had fallen, within the exemption provided by s. 44(2)(b)(i), the other half consisted of a dividend declared after that date and therefore not falling within that exemption.

Nevertheless an assessment of the income tax payable by the appellant, of which notice was issued on the 7th June 1943, was made on the footing that the whole £6800 was excluded from the appellant's assessable income. The tax so assessed was duly paid, but some months later, in May 1944, an extraneous matter led to a reconsideration of the assessment, and it was decided to amend the assessment by bringing back into assessable income the amount of the dividend declared on 24th December 1941. In a space provided on the form of notice of amended assessment for a statement of the reason for the amendment there were inserted the cryptic, not to say misleading, words: "Correction of error in calculation of Rebate on Dividends. Add £3400 Property". That was all. There had in fact been no error in calculation. There had never been any question of rebate in the true sense of the word. The dividends referred to were not identified. The taxpayer was left to guess what it was all about, and to draft his objection, if he wished to object, with no intelligible indication of what he had to deal with.

Before the objection was prepared the appellant's representative had a conversation with an officer of the Department, but there is no clear evidence of what was said. From the terms of the objection it would seem that the representative learned, as no doubt he had already guessed, that the £3400 to which the notice of amended assessment referred was the second dividend from Rowden Pty. Ltd., and gained the impression that the mistake which the Department considered it had made in the original assessment was the mistake of overlooking the repeal of s. 44(2)(b)(i) by the amending Act No. 38 of 1941 in relation to dividends declared on or after 30th October 1941. The appellant was not able to maintain that the original assessment was correct, and he therefore could not successfully object to the amended assessment unless upon the ground that the Commissioner had no power to make it. The general power to amend an assessment, conferred by subs. (1) of s. 170, is qualified both by subs. (2) and by subs. (3), the former applying where a taxpayer has not, and the latter where he has, made to the Commissioner before the making of the original assessment a full and true disclosure of all the material facts necessary for his assessment. If he has not made such a disclosure and there had been an avoidance of tax, subs. (2) allows an amendment, not only to correct an error in calculation or a mistake of fact, but also to prevent avoidance of tax. If he has made such a disclosure no amendment increasing his liability can be made except to correct an error in calculation or a mistake of fact. (In each case a limit of time is prescribed, but the amended assessment made on 7th September 1944 was within time under either subsection.) The appellant lodged an objection which asserted that the amended assessment was invalid upon the grounds, in effect, that prior to the original assessment he had made a full and true disclosure of all the material facts necessary for his assessment; that in making the original assessment the

Commissioner had not made any error in calculation or mistake of fact, but had made an error in law in that he had applied s. 44(2(b)(i) in excluding the dividends of Rowden Pty. Ltd. from assessable income; and that in making the amended assessment, which, if valid, would increase the appellant's liability to tax, he had done no more than give effect to the repeal of s. 44(2)(b)(i) in relation to the dividend which had not been declared prior to the 20th October 1941.

When the appeal came on for hearing, counsel for the Commissioner set out to support the amended assessment primarily on the footing that the appellant had made a full and true disclosure of all material facts; and he made it clear at once that he would endeavour to prove that the mistake which had been made was neither an error in calculation as the notice of the amended assessment had suggested nor the error of law which the draftsman of the objection evidently believed had occurred, but was a mistake of fact which had resulted in both the dividends of Rowden Pty. Ltd. being treated as exempt under s. 44(2)(c)(ii). This provision had never before been used in relation to Rowden Pty. Ltd. It is still in the Act, and it excludes from the assessable income of a shareholder dividends paid by a company wholly and exclusively out of the amount remaining after deducting, from income (not being assessable income of the company) which the company has received as dividends from a company which derived income from the working by it of a mining property in Australia or in the Territory of New Guinea and which are paid wholly and exclusively out of income so derived, any losses or outgoings incurred in gaining or producing that income which would have been allowable deductions if that income had been assessable income. If both Bulolo and Placer had derived their respective incomes from working mining properties in Australia or New Guinea, and if the dividends which they paid to Rowden Pty. Ltd., and out of which the latter paid the dividends totalling £6800 mentioned

in the appellant's return, had been paid wholly and exclusively out of income so derived, then it would have been true that by virtue of s. 44(2)(c)(ii) both the dividends of Rowden Pty. Ltd. were excluded from the appellant's assessable income. (It would have been true because the income of Rowden Pty. Ltd. out of which it paid its dividends would have been excluded from its assessable income by s. 44(2)(c)(i) which applies to dividends paid by companies (Bulolo and Placer) wholly and exclusively out of what may be called the net amount of non-assessable income derived by the company from the working by it of a mining property in Australia or the Territory of New Guinea). The error of fact which the Commissioner set out to prove was that in the making of the original assessment the two dividends which the appellant received from Rowden Pty. Ltd. had been excluded from his assessable income in consequence of an assumption made by an officer of the Department that both Bulolo and Placer had derived their respective incomes from the working by them respectively of mining properties in Australia or New Guinea. This assumption, if it was made, was correct in the case of Bulolo, but admittedly it was not in the case of Placer. Placer in fact had never worked any mining property in Australia or New Guinea, but derived dividends from both Bulolo and a South American company called Pato Consolidated Gold Dredging Limited. The fact that Placer had no income from mining in Australia or New Guinea did not mean that the first dividend was wrongly excluded from the appellant's assessable income, because of course that dividend was in any case excluded by s. 44(2)(b)(i); but it did mean that the second dividend was wrongly excluded, because not only did s. 44(2)(b)(i) not apply to it, but, being paid by Rowden Pty. Ltd. out of a fund in which dividends from Bulolo were mixed with dividends from Placer, it was not paid wholly or exclusively out of income which satisfied the description contained in s. 44(2)(c)(ii).

The substantial issue which was contested at the hearing was whether the exclusion of the second dividend of Rowden Pty. Ltd. arose from the suggested assumption as to the source of Placer's dividends. The case for the Commissioner was that the assumption was made by an officer named Gibbs, and that the error in the assessment proceeded entirely from action which Gibbs took in consequence of the assumption. At the time of the original assessment, Gibbs was an assessor working in the Melbourne office of the Taxation Department on company assessments. His duties included the preparation of a list showing, with respect to each of the companies whose returns he handled, the extent to which dividends declared by those companies should be treated by assessors dealing with shareholders' assessments as either exempt or subject to rebate. This list bore the title "Rebates on Company Dividends", the word "rebate" being used within the office to include exemptions of dividends. The list was made out on a form ruled with seven columns. The first column was for certain reference numbers, and the second for the names of the companies. The third column was for the percentage (if any) of the total dividends paid by each company during the year ended 30th June 1942 which was rebatable under s. 107 as having been paid out of amounts taxed or taxable against the company under Division 7 relating to private companies. The fourth column was for any percentage exempt under s. 44(1)(b). The fifth was for any percentage exempt under s. 44(2)(c) and (d). The sixth was for a percentage described as exempt under s. 44(2)(b)(i) and 3. The last column was for a percentage described as "Exempt paid prior to 30-10-41" which, although the word "paid" was used instead of "declared", was intended to include the percentage exempt under s. 44(2)(b)(i).

The return of Rowden Pty. Ltd. for the year ended 30th June 1942 came before Gibbs, and he took certain steps which I conclude from the evidence were in the following

order. First, he wrote in red ink on page 2 of the return, on which page the two dividends declared in 1941 were mentioned: "50% Ex. Sec. 44(2)". Then, on his list of "Rebates on Company Dividends" he wrote the name of Rowden Pty. Ltd. and put "50%" in the last column, headed "Exempt paid prior to 30-10-41". After a short interval of time, but on the same day, he decided that these entries were wrong, and proceeded to alter them. On the return he wrote "100" over the "50", and after the "Sec. 44(2)" he added "(c) and (d)". Then he turned to his list of "Rebates on Company Dividends", crossed out the "50%" in the last column, and inserted "100%" in the column headed "Exempt Sec. 44(2)(c) and (d)". The reference to para. (d) of s. 44(2) was inappropriate, because that paragraph relates to dividends paid out of income from mining for petroleum, and Gibbs at no time supposed that either Bulolo or Placer had anything to do with petroleum; but clearly enough what he did on page 2 of the return was to copy in full the heading of the fifth column on his list of "Rebates on Company Dividends". His work in connection with the list, I may say, was apparently not supervised or checked in any way.

In accordance with the system in force in the office, the list of Rebates on Company Dividends containing Gibbs' altered entry in relation to Rowden Pty. Ltd. went to a clerk named O'Donnell, whose duty it was to transcribe the information in it, in alphabetical order of companies, into a book known as the Dividend Rebate Register. This register was kept as a source of information which could be relied upon by officers dealing with the assessments of shareholders in order to decide what rebates or exemptions they should allow in respect of dividends. O'Donnell's function with regard to the register was to make a purely mechanical transfer of the information which Gibbs' list supplied. He was not expected to make, and in relation to Rowden Pty. Ltd.

he did not make, a check of any sort. It may be mentioned that in addition to the Dividend Rebate Register there was a system of cards upon which the information provided by Gibbs' list was also entered, but in relation to Rowden Pty. Ltd. no card was brought into existence until some years later.

When the appellant's return of income derived during the year ended 30th June 1942 came to be dealt with, it was handled by an assessor named Mooney. In accordance with the practice observed when a return disclosed the receipt of dividends from companies, Mooney sent the return to a rebate clerk for the purpose of having noted on it any relevant rebates or exemptions. The rebate clerk, one Kissane, wrote "100" on the return against the item "Rowden Pty. Ltd. £6800", thereby indicating that this amount was 100 per cent. exempt. Kissane did this on the authority of the entry which he found made by O'Donnell in the Dividend Rebate Register, and therefore on the ultimate authority of the entry in Gibbs' list. He had no duty to go behind the register and he did not do so. He sent the return back to Mooney, who proceeded to work out the appellant's assessable income and then his taxable income. In doing so he excluded both the Rowden Pty. Ltd. dividends because of Kissane's having marked them 100 per cent. exempt. It was not his duty to make any independent inquiry on the point, and he made none. He sent the papers to the Calculations Branch for calculation of the tax on the basis of the figures he had worked out, and on receiving this calculation he made out the notice of assessment.

It is clear from all this that the erroneous exclusion from the appellant's assessment of both, instead of only the first, of the Rowden Pty. Ltd. dividends resulted wholly and solely from the mistake which Gibbs made when he changed the entry on his list from 50% exempt as paid prior to 30th October 1941 to 100% exempt under s. 44(2)(c) and (d).

The crucial question under s. 170(3), therefore, is whether Gibbs made the change through a mistake of fact or through a mistake of law. It could not have been through the error of law which the draftsman of the appellant's objection apparently apprehended, because Gibbs did not alter the "50" to "100" in the column appropriate to s. 44(2)(b)(i), and indeed the heading of the column, referring as it did to the date after which that provision ceased to apply, would almost certainly have precluded that mistake even if Gibbs had been prone to make it. Clearly enough Gibbs came for some reason to the conclusion that both the dividends fell within s. 44(2)(c). But why? Was it because he wrongly supposed the fact to be that Placer, as well as Bululo, derived its income, out of which it paid its relevant dividends, from working mining properties in Australia or New Guinea, or was it because he misunderstood or forgot some part of the provision made by s. 44(2)(c), or was it because he fell into both these errors? He himself said in the witness box that it was because he had a wrong belief that Placer's income was from mining by it in Australia or New Guinea. Before I examine his evidence, however, it will be convenient to complete the story.

As I have mentioned already, it was in 1944 that the assessment was reconsidered and the erroneous exclusion of the second dividend was discovered. An examiner named Lang, whose immediate concern was with an altogether different matter which the appellant's solicitors had asked should be dealt with, requested a company assessor named Mattingley to examine the return of Rowden Pty. Ltd. and to "check the calculation of rebates". Mattingley ascertained by investigation that dividends paid by Placer were treated in the Sydney office (where the returns of Placer were lodged) as wholly exempt when paid before the 30th June 1941, as proportionately exempt when paid in the year ended 30th June 1942, and as taxable in full when paid thereafter. He inferred

that the exempting provision of the Act which had been regarded in Sydney as appropriate for Placer dividends was s. 44(2)(a) and not s. 44(2)(c)(i). From that he concluded that the wrong paragraph had been applied in treating as 100 per cent. exempt th the dividends of Rowden Pty. Ltd. declared in July and December 1941, that is to say he concluded that s. 44(2)(c)(ii) had been applied to both dividends instead of s. 44(2)(b)(i) being applied to the July dividend only. He then obtained from the appellant's solicitors certain further information, which satisfied him that the second of the Rowden Pty. Ltd. dividends had been paid out of a fund which included a Placer dividend, as Rowden Pty. Ltd.'s return for the year ended 30th June 1942 itself had shown. This fact justified him in concluding, as he did, that the second dividend, declared too late to be exempt under s. 44(2)(b)(i), was not exempt under s. 44(2)(c)(ii) either. But how the mistake of treating it as exempt had come to be made, Mattingley took no steps to discover. He did not look at the Dividend Rebate Register. It occurred to him that Gibbs' list was the source of the error, but he did not look at it. Worse still, without asking Gibbs a single question, he took it upon himself to announce to Lang the conclusion that Gibbs had wrongly assumed that Placer derived its income entirely from gold mining in Australia or New Guinea. He called the error that had been made an error in calculating the rebate, and, according to Lang, he stated that a mistake of fact had been made.

Lang, like Mattingley, omitted to take the obvious course of making a simple inquiry of Gibbs. He dubbed the mistake one of fact "in accepting that the whole of the dividend was from goldmining". He reported to his superior officer that Mattingley had stated that an error had been made in calculating the rebate, and he also reported that the appellant's solicitors had been advised of the position and had contended that s. 170(3) precluded the amendment of the

assessment as all the material facts were in the Department's possession. Then, still without having found out from Gibbs what was the truth of the matter, he boldly added: "However it is considered that the error was one of fact and the assessment should be amended by including £3400 the taxable portion of the 42/43 dividend".

This report went to an Assistant Senior Assessor named Love, who was equally untroubled by the reliance that had been placed by the appellant's solicitors on s. 170(3). He simply approved of Lang's proposal without further inquiry. In evidence Love said that the mistake of fact was the one revealed in Lang's submission; but of course the submission did not specify any particular mistake of fact. Love's answers before me to questions on the point did not suggest that he had had the idea that a wrong assumption had been made as to the source from which Placer had paid its dividends. It may be that as he was speaking long after the event Love was not doing himself justice in the witness-box, but one thing is all too clear. That is that an Assistant Senior Assessor, being invited by his subordinate officer to decide that an amended assessment substantially increasing a taxpayer's liability for tax was authorized by the Act on the ground that an unspecified mistake of fact had occurred, directed that the amended assessment be made, without having taken any steps whatever to ensure that the taxpayer was being treated as the Act entitled him to be treated, without, that is to say, ascertaining what the mistake actually was that had been made, and therefore without having formed a judgment of his own as to whether the mistake was one of fact or not.

Upon Love's approval being received by Lang, the latter caused the notice of amended assessment to be issued; and it was he who was responsible for the failure to make an intelligent use of the space provided on the form of notice for informing the taxpayer of the reason for the

amendment.

This makes a strange story, and it becomes still stranger. The appellant's objection was disallowed on 16th December 1947, no-one yet having approached Gibbs about the mistake he was supposed to have made; and although in January 1948 the appellant requested that his objection should be forwarded to this Court as an appeal another three years went by before Gibbs, at long last, was asked to perform the feat of remembering why he had made an alteration then eight years old. And after still another three years, Gibbs was called upon to give his evidence in the witness-box.

It is not to be wondered at that before his examination had proceeded very far, Gibbs felt the need to say that his memory was "very vague after all this time", and that when he got into some difficulty in cross-examination he said: "You see, my knowledge of that time is apparently not very definite and I have had twelve years for that knowledge to become less clear." Still, he claimed to remember "fairly definitely" that after he made the 90 per cent. entry on his list he "suddenly realised" that Bulolo and Placer "were gold-mining companies", that he "understood at that time that they solely derived their income from Australia and New Guinea", and that "therefore they would be exempt under 44(2)(c)(ii)". Thus the recollection to which he deposed coincided with the assumption which his fellow-officers had made in 1944.

If I accept Gibbs' evidence, the case for the Commissioner is made out. I do not suggest that he was not an honest witness, but whether his evidence is correct is another matter. When he was first asked to think back to the crucial occasion, he was faced with the task of isolating an event long past which was similar in kind to many in which he must have been concerned both before and afterwards, and to recapture the unrecorded thoughts which had accompanied that event. His Department had committed itself and re-committed itself, and

fellow officers had committed themselves as individuals, to a particular theory as to what had been the state of Gibbs' mind in 1943; and now he was asked to say whether or not they had all been wrong. The atmosphere was hardly conducive to detachment and accuracy of recollection.

I must say that I am not satisfied, even on a balance of probabilities, that Gibbs' evidence is correct. It may well be true that when he deleted "50" in the final column of his list and inserted "100" in the fifth column he had an idea in his mind that both Bulolo and Placer were companies deriving the whole of their income from gold-mining, directly or indirectly. But I am far from satisfied that his memory of the terms of s. 44(2)(c)(ii) was at all clear. In particular, I doubt very much whether he had in mind the requirement that the mining property in question in a given case must have been worked by the company which declared the dividends, or the requirement that the mining property worked must be in Australia or in New Guinea, or the requirement that the mining company's dividends had to be paid wholly or exclusively out of its mining income. The easy manner in which he took for granted that it was good enough to base the guidance he was trusted to provide for the assessors upon his own unverified beliefs about Bulolo and Placer - with which companies, by the way, he does not appear to have had anything to do on any other occasion - suggest, to say the least of it, an uncritical approach to the task he was performing. I think it more likely that he contented himself with too general and inexact an idea of the terms of s. 44(2)(c)(ii), to which in his evidence he gave the inaccurate label of "the gold-mining section", than that he was alive to all the requirements of that provision and had an actual belief that they were all satisfied. That he was not given to great accuracy of thought was apparent at more stages than one in his evidence, and perhaps specially in his answers to cross-examination concerning his belief that Placer had,

or had had, mining activities in New Guinea and Western Australia.

A careful reading of the transcript has not altered the impression which I formed at the hearing, that Gibbs' evidence does not provide a satisfactory foundation for a finding that the mistake which he made eleven years ago was one of fact. The onus of proving that it was lies upon the Commissioner under subs. (3) of s. 170, for that subsection postulates as a condition of its application that an error in calculation or a mistake of fact has occurred, and it authorizes only an amendment to correct such an error or mistake. I am therefore of opinion, assuming that before the making of the original assessment the appellant made a full and true disclosure to the Commissioner of all material facts necessary for his assessment, that the amendment of the assessment was invalid by reason of subs. (3).

The Commissioner's alternative case, under subs. (2) of s. 170, must also fail if the appellant made such a full and true disclosure. In my opinion he did. It is conceded that he knew what facts were placed before the Commissioner in the return of his company, Rowden Pty. Ltd. What facts necessary for his assessment, then, were material to be disclosed in his own return but were left undisclosed? For the Commissioner it is said that first there was the fact that Placer derived the profits which it applied in paying its relevant dividends from dividends of Bulolo and Pato; and it was said in this connection that there could and should have been placed before the Commissioner the contents of the letters from Placer which accompanied its dividend cheques. Secondly, it was submitted that the Commissioner should have been given copies of all such portions of Rowden Pty. Ltd.'s accounts and minutes as were necessary to show that in appropriating profits to the payment of dividends it applied the "last in first out" principle and did not keep its Bulolo dividends

separate from its Placer dividends. If the Commissioner's officers had had all this material before them, it was contended, they would have been enabled to see at once that the dividends declared by Rowden Pty. Ltd. in 1941 were paid out of a mixed fund of Bulolo and Placer dividends, and that the Placer dividends were not paid out of income derived from the working by Placer of any mining property (or indeed exclusively from the working by anybody of a mining property in Australia or New Guinea), and therefore they would have perceived that the facts of the case did not bring it within s. 44(2)(c)(ii). But it cannot be that in order that a taxpayer shall be held to have made a full and true disclosure of all material facts necessary for his assessment he must direct the Commissioner's attention to the non-existence of all facts which, if they existed, would entitle him to the benefit of exemptions which he does not claim and which he has no reason to suppose may be thought applicable to him. The Commissioner in this case knew that the appellant, who was a resident, had derived £6,800 in dividends from Rowden Pty. Ltd. That meant that as a matter of law the £6,800 was prima facie included in the appellant's assessable income by s. 44(1)(a). The Commissioner knew, too, that in past years it had been only under s. 44(2)(b)(i) that the appellant's dividends from Rowden Pty. Ltd. were treated as excluded from his assessable income. He knew that the £6,800 derived by the appellant from Rowden Pty. Ltd. in 1941 consisted of two dividends of which one was declared before and one after the 30th October 1941, and therefore he knew that having regard to the amending Act the second dividend was not, though the first was, excluded by s. 44(2)(b)(i). There was nothing more that he needed to know in order to make a correct assessment, and it is nothing to the point that if the appellant had stated more facts in his return the Commissioner's officers would or might have been put on their guard against gratuitously

allowing him an exemption to which he was not entitled. In my opinion the case does not fall within s. 170(2).

For these reasons I hold that the amended assessment was not authorized by the Act. I allow the appeal with costs, and order that the amendment of the assessment be set aside.

Original Jurisdi

Heard Melbourne
28th & 29th September 1954
Delivered Sydney
11th November 1954

White

v.

Commissioner of Taxation