REASONS FOR JUDGMENT

COURT	:	High Court of Australia Principal Registry
PARTIES	:	AUSTIN DISTRIBUTORS PTY. LTD. v. COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA
NATURE OF PROCEEDINGS	:	Appeal from Taxation Board of Review No. 2. Question whether company by disclosing sale of "Crown Licence" made a full and true disclosure within S.170 of Income Tax and Social Services Contribution Assessment Act.
CORAM	:	MENZIES J.
ORDER OF COURT	:	Appeal dismissed with costs
DATE	:	8th December 1964.

AUSTIN DISTRIBUTORS PROPRIETARY LIMITED

v.

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA

ORDER

Appeal dismissed with costs.

AUSTIN DISTRIBUTORS PROPRIETARY LIMITED

v.

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA

JUDGMENT MENZIES J.

AUSTIN DISTRIBUTORS PROPRIETARY LIMITED

v.

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA

The appellant taxpayer received during the year ended 30th June 1955 what now appears as a net sum of £74,917 which, at the hearing, it was conceded was assessable income in that it was a premium upon the assignment of a lease made to Radio Corporation Pty. Ltd. on 31st October 1954. The sum of £74,917 was not the actual amount received in connection with the assignment of the lease (see ss. 83 and 84); it was rather a sum calculated to the nearest pound by deducting from the price for which the lease was sold (i.e. £87,500) an amount of £12,582.17.4 made up by adding that portion of the £87,500 which the taxpayer attributed to fixtures and fittings, £1,632.13.6, to £10,950.3.10 - described merely as "Cost" - and which was presumably either the cost of the lease or the amount spent upon improving the land, or partly one and partly the other. The taxpayer's return for the year of income did not show any premium as an item of assessable income and the original assessment, based as it was upon the return, did not bring the sum of £74,917 to tax. More than three years after the date upon which the original assessment became due and payable, the Commissioner issued an amended assessment seeking to bring the £74,917 to tax and to increase the appellant's taxation by £26,219 from £95,036 to £121,256. The taxpayer objected to the amended assessment upon the ground that the sum of £74,917 was not a premium and that the amendment to the assessment was forbidden by s. 170 sub-s. (3) of the Act in that the taxpayer had in its return made a full and true disclosure of all the material facts necessary for its

assessment. The Board of Review disallowed both objections and upheld the assessment. Upon the hearing of the appeal to this Court, the objection that the £74,917 was not a premium was abandoned. Accordingly, the argument in favour of the objection that the Commissioner had no power to issue the amended assessment (which involved the assertion that to disclose the assignment of a Crown licence was to disclose the assignment of a lease) was presented without detraction by reason of any accompanying argument that a Crown licence is not a lease. In this way it became common ground for the purpose of the appeal that the Crown licence assigned by the taxpayer was a lease for the purposes of the Income Tax and Social Services Contribution Assessment Act.

The full and true disclosure of all the material facts necessary for the taxpayer's assessment was said to have been made in the return in the following fashion. To the return there was attached the taxpayer's balance sheet and accounts for the year ended 30th June 1955 and a "Summary For Taxation", showing how the figure of taxable income stated in the return was reached. The foregoing documents included :-

(1) A balance sheet as at 30th June 1955 containing the following as one of a number of items under the heading "Fixed Assets":

"Buildings erected on land held under Crown Licence and Lease - at cost to Group at 30th June 1954	115630.16. 0
Less Cost Value of Building sold	38496. 0. 0
	£77134. 16. 0."

(2) A trading account for the year ended 30th June 1955 showing on the profit side an item as follows :

"Surplus on sale of Land and Buildings	£54508. 5. 3."

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(3) A schedule showing the calculation of the sum of £54,508. 5. 3 aforesaid as follows :

"Surplus on Sale of Land and Buildings

Moore Street, South Melbourne (Crown Licence) Sold to Electronic Industries Ltd. for		£87,476. 8. 0	
Add, adjustment Rates, etc.	110.10. 0		
Less, Rent paid	86.18. 0	23.12. 0	
		87,500. 0. 0	
Less, Book Value	38,496. 0. 0		
Book Value Fixtures and Fittings	1,632.13.6	40,128.13. 6	47,371. 6. 6
Book Value			
Cost	£10,950. 3.10		
Less, Depreciation	2,450. 3.10		
	8,500. 0. 0		
Add, Surplus on Revaluation	29,996. 0. 0		
	£38,496. 0. 0		
Toorak Land and Building (Freehold) Sold to W. Herman Slade for		23,000. 0. 0	
Less, Commission and charges		563. 1. 3	
		22,436.18. 9	
Cost	17,440. 0. 0		
Less, Depreciation	2,140. 0. 0	15,300. 0. 0	7,136.18. 9
Profit and Loss Account			£54,508. 5. 3"

(4) The aforesaid Summary For Taxation showing, inter alia, that the disclosed taxable income of £276,850 had been arrived at without bringing into account the aforesaid sum of £54,508.

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It may be said that if by reason of the foregoing there was true and full disclosure of the receipt of a net premium of £74,917, it is something not immediately manifest - but that is hardly the question.

It appears to me that the facts material for the correct assessment of the taxpayer were, so far as is relevant for present purposes, the following :

(i) that the taxpayer, being the holder of a lease not falling within s. 89 of the Act, had assigned that lease during the year in question ;

(ii) that the consideration received therefor was £87,500, but that £1,632.13. 6 thereof was properly deductible for fittings and fixtures to arrive at the consideration for the assignment of the lease ;

(iii) that there had been an expenditure by the taxpayer of £10,950 to acquire the lease or in effecting improvements upon the land the subject of the lease.

The real question for decision is whether the taxpayer truly and fully disclosed the foregoing facts.

As to the first of the foregoing matters, it was disclosed that the taxpayer had assigned a Crown licence relating to land at Moore Street, South Melbourne, upon which there were buildings and in respect of which rates were being paid. Reference to the Victorian Land Act 1928, s. 129, shows that licences other than for the purposes of agriculture or grazing could be issued for some purposes which would involve or permit occupation of the land, and some which would not. The most general power was to grant a licence to enter upon Crown lands for any purpose for which leases may be granted. This requires a reference in turn to s. 125 of the Act which, at the end of an enumeration of purposes for which leases may

be granted, authorizes leases for any purpose authorized by the Governor in Council. As I read the taxpayer's return, it did not disclose the purpose for which the licence was held but it did disclose that the taxpayer was a company engaged, inter alia, in motor-car assembly, with some £130,000-worth of land and £30,000-worth of plant. As I have said, it did also appear that buildings of what was called a "Cost Value" of £38,496 were upon the land the subject of the licence. Upon the information which I have now stated, it was argued for the taxpayer that it sufficiently appeared that the Crown licence in question did confer the right to exclusive occupation of the land to which it related and I was informed that the area was in fact used for the assembly of motor-cars. I was further informed that the authority to grant the licence depended upon the general provisions of ss. 129 and 125 to which I have already referred. The disclosure made by the taxpayer to the Commissioner, however, did not go beyond what I have stated, and the licence itself was not disclosed.

The requirement of s. 170 of the Income Tax and Social Services Contribution Assessment Act is not met by anything less than full disclosure of all the material facts, and a disclosure which leaves the Commissioner to speculate as to some of the material facts is not sufficient. I have reached the conclusion that there was not full disclosure of the facts requisite to arrive at a determination whether the taxpayer was a lessee of the land for the purposes of the Income Tax and Social Services Contribution Assessment Act. The matter can be tested in this way. If advice were to have been sought by the taxpayer whether or not the sum in question was a taxable premium, would the person from whom that advice was sought have required more information than this return disclosed to the Commissioner? I cannot escape the conclusion that he would and that, in particular, he would have required

to know the purpose for which the licence was granted and its terms.

Passing now to the second of the foregoing questions, I consider that it was disclosed that the Crown licence had in the year of income been assigned for £87,500, less £1,632.13. 6 for fittings and fixtures, and it was not argued before me that this amount was not deductible to arrive at the consideration for the assignment of the lease.

The third of the foregoing matters occasions me some difficulty. It was, I am disposed to think, disclosed that there had been an expenditure of £10,950 in effecting improvements upon the land subject to the Crown licence. I say "in effecting improvements" because the figure of cost, £10,950. 3.10, appears among the figures showing how the "Cost Value of Building sold" was made up. It does not appear, however, that the improvements were effected by the taxpayer. All that is disclosed is a figure of £115,630.16. 0 for "Buildings erected on land held under Crown Licence and Lease - at cost to Group at 30th June 1954". The £38,496 "Cost Value of Building sold" was included in this sum of £115,630.16. 0 and, as it has appeared, the £10,950. 3.10 was included in the £38,496. The "Group" which erected the buildings I would gather from the return to be Aldis Holdings Limited and its subsidiaries, of which the return did disclose the taxpayer was one. Accordingly, the return merely disclosed that the "Group" paid £10,950. 3.10 for effecting improvements upon the land held by the taxpayer under the licence and not that the taxpayer itself spent that sum. Whether it did so was, of course, a fact material for its assessment, for it was not entitled to a deduction under s. 85 except as to amounts which it itself had spent. As to this matter, therefore, I find there was not full and true disclosure.

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Dr. Coppel, relying upon correspondence between the taxpayer and the Commissioner, argued that, because the Commissioner had not sought from the taxpayer information beyond that disclosed in the return before intimating that the assessment would be amended, as it eventually was, the inference should be drawn that the Commissioner had in fact obtained from the return all the information required for a correct assessment. I do not think, however, that I should so infer. I cannot, for instance, be sure that the Commissioner did not obtain additional information from some source other than the taxpayer before giving the intimation that he gave.

It is for the foregoing reasons that I have come to the conclusion that this appeal should be dismissed.

MENZIES J.