

Ch Book V. 13 of 1928 (16)

Melbourne Trust
Limited

✓
Commissioners of
Taxation

Judgment

MELBOURNE TRUST Ltd. v. THE COMMISSIONER OF TAXATION.

JUDGMENT.

RICH J.

In this case Mr. Cohen has said everything that can be said on behalf of the respondent. I regret that there has been some misunderstanding on the part of the Deputy Commissioner, owing no doubt to the fact that he was not in Court during the course of the proceedings before me. The facts in the case are very clearly fixed in my memory. When the appeal came before me Counsel for both parties agreed that, although there were a number of objections to the assessment, one question, namely, that all the businesses of the Company constituted one business, if answered in the affirmative, would conclude the whole matter, with the result that there would be no tax, and so render it unnecessary to

deal with the other objections. This view of the case was in accordance with the opinion of the Deputy Commissioner himself and Mr Cohen has referred me to the Notice of Objection and the Commissioner's letter. The Notice of Objection is Annexure "F" and the letter Annexure "G" , In this letter, which was dated 14th August 1926, the Deputy Commissioner disallowed ground 3 of the grounds of objection because these grounds were covered by the appeal dated 27th August 1923. That appeal was the subject of the application to me. Ground 3 was alternative to grounds 1 and 2, and stated that " the assessment is incorrect as the Company is a realization Company and the business undertakings, being all directed towards the end for which it was formed, should be treated as constituting one business

for the purposes of assessment under the War Time Profits Tax Assessment Acts. I asked counsel for the respondent if he wished to lead any evidence. After consultation with those advising him he answered in the negative, and I certainly understood him to express his concurrence in the statement that the admissions made in the appeal were the only relevant facts for determining the question as to the unity of the businesses of the company, and that this question, if answered in the affirmative, would preclude the necessity of dealing with any other matters and would result in there being no tax.

Now, the case having been conducted and determined on this footing, I cannot allow the respondent to re-open the whole matter and so depart from the admissions made and the undertaking given by his counsel,

The order I made was based on these premises and it was not adapted to meet the facts now attempted to be set up. It was drawn in accordance with the language of section 29 of the War Time Profits Assessment Act, which appears to present to the Court the alternative of reducing or increasing the assessment. The use of the word "reduce" in the order in no way implies uncertainty as to the final result, and, as the order on its face does not finally dispose of the matter, I shall make a supplementary order to carry out its true meaning and I shall reduce the assessment to nil. The respondent must pay the costs of this motion.

(Mr Ham) In case there should be a further misunderstanding of the effect of reducing something to nil, would Your Honour add that the assessment is cancelled?

His Honour, Under the terms of the section which says that the
Court may make such order as it thinks fit - very well, Yes.