

Smt. Tarulata Shyam and Others

Vs

Commissioner of Income-Tax, West Bengal

Civil Appeal No. 147 of 1972

(P. N. Bhagwati, Syed M. Fazal Ali JJ)

28.04.1977

JUDGMENT

SARKARIA J. -

Whether any payment by a company not being a company in which the public are substantially interested within the meaning of section 23A, of any sum by way of advance or loan to a shareholder, not exceeding the accumulated profits possessed by the company is to be deemed as his dividend under section 2(6A)(e) read with section 12(1B) of the Indian Income-tax Act, 1922, even if that advance or loan is subsequently repaid in its entirety during the relevant previous year in which it was taken, is the only question that falls to be determined in this appeal by special leave.

The assessment year is 1957-58 and the corresponding previous year is the calendar year 1956. The assessee is a shareholder and the managing director of M/s. Dolaguri Tea Co. (P.) Ltd. The company is admittedly one in which the public are not substantially interested within the meaning of section 23A of the Indian Income-tax Act, 1922 (for short, "the Act"). At the commencement of the previous year, there was in the books of the company a credit balance of Rs. 65,246 in the assessee's account, which had been brought forward from the earlier year. Between the 11th January and the 12th November, 1956, the assessee withdrew in cash from time to time from the company, amounts aggregating Rs. 4,97,442. The first two cash amounts of Rs. 3,50,000 and Rs. 40,400 were taken by the assessee on 11th January, 1966. Deducting therefrom the opening balance of Rs. 65,246 and two more items, namely, Rs. 1,40,000, being outstanding dividends declared on 31st December, 1955, of his major son, and transferred to his account, and a further dividend of Rs. 19,493 credited to his account from Kathoni Tea Estate, there remained a sum of Rs. 2,72,703 to the debit of the assessee in the books of the company as on the 12th November, 1956. On December 29, 1956, the assessee paid back to the company a sum of Rs. 1,90,000. On December 31, 1956, his account was credited with another sum of Rs. 80,000 in respect of the dividend due to him and his wife, and with a further sum of Rs. 29,326 for hypothecation. In this manner before the end of the previous year, the assessee's account was credited with an aggregated amount of Rs. 2,99,326 which exceeded the debit balance of Rs. 2,72,703 as on November 12, 1956. Thus at the end of the relevant previous year, no advance or loan was due to the company by the assessee.

The Income-tax Officer found that the accumulated profits of the company as on January 1, 1956, amounted to Rs. 6,83,005. He, therefore, deducted the two aforesaid items of Rs. 1,40,000 and Rs. 19,493 aggregating Rs. 1,59,493 from the amount paid in cash to the assessee and treated the balance of Rs. 2,72,703 as the net "dividend" income in the hands of the assessee within the meaning of section 2(6A)(e). The Income-tax Officer grossed up that amount under section 16(2) and gave credit for tax in accordance with that section to the assessee.

The assessee's appeal to the Appellate Assistant Commissioner having failed, he preferred a further appeal to the Income-tax Appellate Tribunal, There was a divergence of opinion between the members of the Tribunal. The Accountant Member took the view that the moment a payment is made as envisaged in section 2(6A)(e) it becomes clothed with the character of a dividend and has to be treated as such income of the assessee, and no subsequent action or repayment by the shareholder can take it out of the mischief of this provision. He, therefore, held that the sum of Rs. 2,72,703 was taxable as dividend under section 2(6A)(e).

The Judicial Member expressed a contrary opinion. In his view, the total income of the assessee during the relevant previous year could be computed and assessed only at the end of that year; it could not be computed at interim periods during the previous year. "If it is found that although the shareholder had taken by way of advance or loan an amount from the company during the course of a previous year but had returned the same to the company before the close of that previous year, it can only be said while computing the shareholder's total income at the end of that previous year that no advance or loans from the section 23A company of which he was a shareholder stood for his benefit at the time relevant for computation of his total income. The advances or loans taken during the interim periods of the previous year would just have to be ignored. "On these premises, the Judicial Member came to the conclusion that the sum of Rs. 2,72,703 grossed up to Rs. 3,19,345 was not a dividend within the fiction under section 2(6A)(e) of the Act.

On account of this difference of opinion, the following question was referred to the President of the Tribunal :

"Whether, on the facts and in the circumstances of the cases, the sum of Rs. 2,72,703 net (Rs. 3,19,245 gross) is to be treated as dividend income in the hands of the assessee within the meaning of section 2(6A)(e) ?"

The President agreed with the Accountant Member and held that an "advance or loan received by the shareholder of a private company forthwith assumes the character of a dividend and becomes his income by virtue of the fiction created by section 2(6A)(e) and it ceases to be a liability for the purpose of taxation, although the assessee may, in fact or in law, remain liable to the company to repay it. If the assessee repays the loan subsequently, such repayment would not liquidate or reduce the quantum of the income which had already accrued, as such repayment is not to be allowed as a permissible deduction under section 12(2). "On these premises, he answered the question in the affirmative.

In accordance with the majority opinion, the Tribunal dismissed the assessee's appeal but, at his instance, referred the same question for opinion to the High Court under section 66(1) of the Act.

The High Court held that the tax was attracted at the point of time when the said loan was borrowed by the shareholder and it was immaterial whether the loan was repaid before the end of the accounting year or not. On this reasoning it answered the question in favour of the revenue and against the assessee.

Hence, this appeal by the assessee.

Before dealing with the contentions canvassed, it is necessary to have a look at the general scheme and the relevant provisions of the Act. Section 2(6A)(e) of the Act reads as follows :

"2. (6A) 'dividend' includes -

(e) any payment a company, not being a company in which the public are substantially interested within the meaning of section 23A, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf or for the individual benefit of a shareholder, to the extent to which the company in either case possesses accumulated profits;

but 'dividend' does not include -

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;

(ii) any advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of clause (e), to the extent to which it is so set off;

Explanation. -The expression 'accumulated profits', wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956."

Sub-section (15) defines "total income" as meaning " total amount of income, profits and gains referred to in sub-section (1) of section 4 computed in the manner laid down in this Act."

Section 3 is the charging section. Two of the principles deducible from the section are :

(1) That the tax is levied on the total income of the assessable entity;

(2) That each previous year is a distinct unit of time for the purpose of assessment, and the profits made or liabilities or losses incurred before or after the relevant previous year are wholly immaterial in assessing the profits of that year unless there is a statutory provision to the contrary.

Section 4(1), so far as it is material, reads as follows :

"4. (1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which -

(a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or

(b) if such person is resident in the taxable territories during such year, -

- (i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or
- (ii) accrue or arise to him without the taxable territories during such year, or.....
- (c) if such person is not resident in the taxable territories during such year, accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year..."

The principles deducible from section 4(1) are :

- (1) The charge is on accrual or receipt basis. Such receipt or accrual may be actual or statutory, i.e., the result of any statutory fiction created by the Act.
- (2) If a particular amount of income is taxed under any of the clauses (a), (b) or (c) of the sub-section the same amount cannot be taxed under any other clause either in the same year or in a different year. That is to say, income which is taxed on accrual under clause (b)(ii) cannot be taxed again on receipt under clause (a) or on remittance under clause (b)(iii) (see Kanga and Palkhivala, volume I, 1959 edition, page 153).
- (3) The receipt spoken of in this clause is the first receipt after the accrual of the income. [See the decision of this court in Keshav Mills v. Commissioner of Income-tax [1953] 23 ITR 230 (SC)].

Sub-section (1) of section 4 also highlights the basic principle embodied in the charging section 3, that the accrual or receipt of income (actual or deemed) is taxed with regard to the relevant previous year.

Section 12 deals with the residuary head : "Income from other sources". Its sub-section (1A) says that :

"Income from other sources shall include 'dividends.....' Sub- section (1B) is crucial. It provides :

"Any payment by a company to a shareholder by way of advance or loan which would have been treated as a dividend within the meaning of clause (e) of sub-section (6A) of section 2 in any previous year relevant to any assessment year prior to the assessment year ending on the 31st day of March, 1956, had that clause been in force in that year, shall be treated as a dividend received by him in the previous year relevant to the assessment year ending on the 31st day of March, 1956, if such loan or advance remained outstanding on the first day of such previous year."

Sub-section (2), inter alia, lays down that in computing any income by way of dividend, allowance shall be given for any reasonable sum paid by way of commission or remuneration to a banker or any other person realising such dividend on behalf of the assessee.

It is to be noted that sub-section (6A) of section 2 and sub-section (1A) and (1B) were inserted in the Act of the Finance Act, 1955, with effect from the 1st April, 1956.

In the relevant assessment year, section 16(2) of the Act was operative and ran as follows :

"16. (2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would, if Income-tax (but not super-tax) at the rate applicable to the total income of the company..... for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend."

Mr. G. C. Sharma, counsel for the appellants, contends that the scope of the fiction created by section 2(6A)(e) should be confined to those advances and loans only, which are not repaid but remain subsisting at the end of the previous year in which they were taken. It is argued that the sole object of this provision is to curb the evil of distributing profits under the guise of loans or advances; that if an advance or loan is repaid in the same accounting year, it cannot be said that it was a device for distribution of profits. It is submitted that only in the case of an advance or loan which remains outstanding at the end of the accounting year, section 2(6A)(e) raises an irrebuttable presumption that it was a payment of dividend under the cloak of a loan. It is maintained that if this construction of section 2(6A)(e) is not adopted, it will lead to extremely oppressive, unreasonable and anomalous results, including double taxation. To illustrate his point counsel compares and contrasts the position of a shareholder who promptly, after a short period, repays the loan in the same year, with one who does not do so but allows it to remain outstanding and be carried over to the next year, and thereafter a dividend is declared. If the interpretation adopted by the High Court is correct-says Mr. Sharma-the shareholder in the prior case who had promptly repaid the loan would not be entitled under sub-clause (iii) of clause (e) of section 2(6A) to set off any part of the subsequently declared dividend against the loan which he had repaid earlier, but will have to pay double tax on the same item; once on it as deemed dividend and then on it as declared dividend. His liability cannot be reduced to the extent of the dividend; because at the date on which the dividend was declared no loan was outstanding against which it could be set off. As against the former, the latter shareholder who makes full use of the loan and does not repay any part of the loan in the same year, but leaves it unpaid till a dividend is declared next year, will get relief by set-off of the subsequently declared dividend, in whole or in part, against the loan outstanding against him.

Another example cited by Mr. Sharma is of a case where the accumulated profit, say is Rs. 9,000, and the shareholder takes an advance or loan of Rs, 3,000 and he repays it after a week, and again gets the same amount (Rs. 3,000) back as a loan, and again repays it after a week, and again retakes the same amount as loan-all the three loans being taken and repaid in the same year. If the unrestricted interpretation of the provision sought by the revenue were to be adopted, the same amount of loan in all the three transaction of loan would be subjected to triple taxation. Such an absurd and oppressive result, says the counsel, would be against the intendment of the provision and inconsistent with the scheme of the Act which generally avoids double taxation. The upshot of the arguments of Mr. Sharma is that under the Act only that item or entity is taxable which is rationally capable of being considered as the income of the assessee; that an advance or loan which is genuine and not a subterfuge for payment of dividend and is not subsisting or outstanding at the end of the previous year on account of its repayment by the shareholder, cannot reasonably be deemed to be his dividend income within the contemplation of section 2(6A)(e) read with section 12 of the Act. Mr. Sharma has taken us through various decisions having a bearing on the problem. The cases referred to, discussed or sought to be distinguished by him are : K. M. S. Lakshmana Aiyar v. Addl. Income-tax Officer [1960] 40 ITR 469 (Mad), Navnit Lal C., Javeri v. K. K. Sen, Appellate Assistant Commissioner Of Income-tax [1965] 56 ITR 198 (SC), Commissioner of Income-tax v. K. Srinivasan [1963] 50 ITR 788 (Mad), Walchand & Co. Ltd. v. Commissioner of Income-tax [1975]

100 ITR 598 (Bom) and Commissioner of Income-tax v. P. K. Badiani [1970] 76 ITR 369 (Bom).

Mr. Sharma also has referred to section 108 of the Commonwealth Income-tax Act as in force in Australia, and submitted that since the substance of section 2(6A)(e) and section 12(1B) has been borrowed from section 108 of the said Act and the object of these provisions in the two enactments is the same, it will not be illegitimate to determine and circumscribe the scope of the fiction created by the provision in question in the light of the principles indicated in section 108 of the Commonwealth Act.

On the other hand, Mr. Ahuja appearing for the revenue, submits that sub-clause (iii) which permits a set-off against a loan deemed as dividend, does not apply in cases where the dividend is not declared in the same accounting year because to hold otherwise would be against the basic scheme ingrained in sections 3 and 4 of the Act, according to which the unit of time for the purpose of assessment is the previous year of the assessee. Mr. Ahuja further maintains that even if during the same accounting year after repayment of the loan, a dividend is declared, sub-clause (iii) will apply, and the Income-tax Officer will not be debarred from reducing, in an appropriate case, the amount treated by him as "dividend" under clause (e) of section 2(6A) to the extent of the subsequently declared dividend, on the principle of notional set-off underlying sub-clause (iii). The point sought to be made out is that since the treatment of the loan to the assessee-shareholder as his dividend rests on a legal fiction, it will not be an illegitimate use of sub-clause (iii) to allow a notional set-off to meet such a situation. Thus construed, says the counsel, there would be no anomaly.

Mr. Ahuja further submitted that section 2(6A)(e) was enacted to suppress the evil of receiving profits or dividends under the guise of loans by the shareholders of controlled company as such a malpractice resulted in evasion of tax. This provision, it is urged, should be construed in a manner which suppresses the mischief and advances the remedy. It is maintained that the language of the provisions in question in plain and unambiguous and no question of seeking external aid for its interpretation arise; the court must give effect to it regardless of the hardship, if any, resulting therefrom. The sum and substance of his arguments is that since all the factual ingredients necessary for raising the fiction contemplated by section 2(6A)(e) and section 12(1B) have been found to exist by the Income-tax authorities and the Tribunal, the loan had to be treated as the assessee's dividend income, the moment it was received, and the subsequent repayment of the loan could not neutralise or taken it out of that category of income. Counsel has drawn our attention to the observations of this court in *Navnit Lal C. Javeri v. K. K. Sen*, Appellate Assistant Commissioner of Income-tax [1965] 56 ITR 198 (SC). He has further adopted the reasoning of the Bombay High Court in *Walchand & Co. Ltd. v. Commissioner of Income-tax* [1975] 100 ITR 598 (Bom).

Section 2(6A)(e) and section 12(1B) were inserted in the Act by the Finance Act, 1955, which came into operation on April 1, 1955. These provisions seems to have been adapted with alterations from section 108 of the Commonwealth Income-tax Assessment Act in force in Australia. Section 108 reads as follows :

"Loans to shareholders. - (1) If amounts are paid or assets distributed by a private company to any of its shareholders by way of advances or loans, or payments are made by the company on behalf of, or for the individual benefit of, any of its shareholders, so much, if any, of the amount or value of those advances, loans or payments, as, in the opinion of the Commissioner, represents distribution of income shall, for the purposes of this Act other than the purpose of Division 11A of Part III and Division 4 of Part VI be deemed to be dividends paid by the company on the last

day of the year of income of the company in which the payment or distribution is made.

(2) Where the amount or value of an advance, loan or payment is deemed, under the last proceeding sub-section, to be a dividend paid by a company to a shareholder, and the company subsequently sets off the whole or a part of a dividend distributed by it in satisfaction in whole or in part of that advance, loan or payment, that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for any purpose of this Act."

It will be seen that under section 108(1) formation of "the opinion of the Commissioner" is the sine qua non for bringing this provision into operation. It has been held by the Australian Board of Review that the mere fact that a shareholder in a private company has become indebted to it does not justify the formation of the opinion by the Commissioner such as is indicated in sub-section (1) of section 108 :

"There must be something that goes beyond a mere debt automatically arising upon a taking of accounts and which points to a subterfuge whereby a payment which, upon examination, is found to relate to the income of the company and to represent the distribution thereof, is made to appear to be a loan or advance." (I.C.T.B.R.(N.S) Case No. 80).

It is noteworthy that at least in one material aspect the Indian law is different from that under section 108(1) of the Commonwealth Act as explained and interpreted by the Board in the case mentioned above. Under section 108, the raising of the fiction is dependent upon a positive finding recorded by the Commissioner of Income-tax that the payment represents distribution of the company's income. But section 2(6A)(e) and section 12 of the Act do not leave this question to the adjudication of the Income-tax authorities. Parliament has itself in the exercise of its legislative judgment raised a conclusive presumption, that in all cases where loans are advanced to a shareholder in a private limited company having accumulated profits, the advances should be deemed to be the dividend income of the shareholder. It is this presumption *juris et de jure* which is the foundation of the statutory fiction incorporated in section 2(6A)(e). Thus, section 108 of the Commonwealth Act appears to be more reasonable and less harsh than its Indian counterpart.

From the above discussion it emerges clear that the fiction created by section 2(6A)(e) read with section 12(1B) of the Act is inexorably attracted as soon as all the conditions necessary for its application exist in a case. In *Navnit Lal's case* [1965] 56 ITR 198, 202 (SC) this court, after an analysis of these provisions, listed these conditions, as follows :

"... the combined effect of these two provisions is that three kinds of payments made to the shareholder of a company to which the said provisions apply, are treated as taxable dividend to the extent of the accumulated profits held by the company. There three kinds of payments are : (1) payments made to the shareholder by way of advance or loan; (2) payments made on his behalf; and (3) payments made for his individual benefits. There are five conditions which must be satisfied before section 12(1B) can be invoked against a shareholder. The first condition is that the company in question must be one in which the public are not substantially interested within the meaning of section 23A as it stood in the year in which the loan was advanced. The second condition is that the borrower must be a shareholder at the date when the loan

was advanced; it is immaterial what the extent of his shareholding is. The third condition is that the loan advanced to a shareholder by such a company can be deemed to be dividend only to the extent to which it is shown that the company possessed accumulated profit at the date of the loan. This is an important limit prescribed by the relevant section. The fourth condition is that the loan must not have been advanced by the company in the ordinary course of its business. In other words, this provision would not apply to cases where the company which advances a loan to its shareholder carries on the business of money-lending itself; and the last condition is that the loan must have remained outstanding at the commencement of the shareholder's previous year in relation to the assessment year 1955- 56."

The first four conditions factually exist in the instant case. The last condition is not applicable because it was a transitory provision applicable to the assessment year 1955-56 only, while we are concerned with the assessment year 1957-58, and the previous year is the calendar year 1956. There is no dispute that the company is a controlled (private limited) company in which the public are not substantially interested within the meaning of section 23A. Further, the assessee is admittedly a shareholder and managing director of that company. It is also beyond controversy that at all material times, the company possessed "accumulated profits" in excess of the amount which the assessee-shareholder was paid during the previous year. The Income-tax Officer found that on January 1, 1956, the accumulated profits of the company amounted to Rs. 6,83,005 while from January 11, 1956, to November 12, 1956, the assessee received in cash from time to time from the company payments aggregating Rs. 4,97,442. After deducting the opening credit balance and some other items credited to his amount, the Income-tax Officer found that in the previous year the assessee-shareholder had received a net payment of Rs. 2,72,703 by way of loan or advance from the company. The company's business is not money lending and it could not be said that the loans had been advanced by the company in the ordinary course of its business. Thus, all the factual conditions for raising the statutory fiction created by sections 2(6A)(e) and 12(1B) appeared to have been satisfied in the instant case.

Mr. Sharma, however, contends that in order to attract the statutory fiction one other essential condition is that the loan or advance must be outstanding at the end of the previous year, and if the loan had ceased to exist owing to repayment or otherwise before the end of the year-as in the present case-the fiction cannot be invoked. In this connection, counsel has again referred to the last limb of section 108(1) of the Commonwealth Income-tax Act according to which the payment to a shareholder by way of advance or loan is to be treated as a dividend paid by the company on the last day of the year of income of the company in which the payment is made.

It is urged that the principle in the last limb of sub-section (1) of section 108 of the Commonwealth Act should also be read into the Indian statute. It is maintained that the omission of such words from sections 2(6A)(e) and 12(1B) does not show that the intendment of the Indian legislature was different. According to the counsel what is explicit in section 108(1) of the Commonwealth Act, is implicit in sections 2(6A)(e) and 12(1B) and the general scheme of the Act which requires that the assessment is to be made on the basis of total income of the whole previous year. Such a view, concludes Mr. Sharma, would also be in consonance with reasons and justice.

We have given anxious thought to the persuasive arguments of Mr. Sharma. His arguments, if accepted, will certainly soften the rigour of this extremely drastic provision and bring it more in conformity with logic and equity. But the language of sections 2(6A)(e) and 12(1B) is clear and unambiguous. There is no scope for importing into the statute words which are not there. Such

importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation.

To us, there appears no justification to depart from the normal rule of construction according to which the intention of the legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commissioner* [1921] 1 KB 64 (KB) at page 71, that :

"..... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be.

In our opinion, the Indian legislature has deliberately omitted to use in sections 2(6A)(e) and 12(1B) words analogous to those in the last limb of sub-section (1) of section 108 of the Commonwealth Act. When sections 2(6A)(e) and 12(1B) were inserted by the Finance Act, 1955, Parliament must have been aware of the provision contained in section 108 of the Commonwealth Act. In spite of such awareness, Parliament has not thought it fit to borrow whole hog what is said in section 108(1) of the Commonwealth Act. So far as the last limb of section 108(1) is concerned Parliament imported only a very restricted version, and incorporated the same as the "fifth condition" in sub-section (1B) of section 12 to the effect, that the "payment deemed as dividend shall be treated as a dividend received by him in the previous year relevant to the assessment year ending on the 31st day of March, 1956, if such loan or advance remains outstanding on the last day of such previous year". The word "such" prefixed to the "previous year" shows that the application of this clause is confined to the assessment year ending on March 31, 1956. In the instant case we are not concerned with the assessment year ending March 31, 1956. This highlights the fact that the legislature has deliberately not made the subsistence of the loan or advance, or its being outstanding on the last date of the previous year relevant to the assessment year, a pre-requisite for raising the statutory fiction. In other words, even if the loan or advance ceases to be outstanding at the end of the previous year, it can still be deemed as a "dividend" if the other four conditions factually exist, to the extent of the accumulated profits possessed by the company.

At the commencement of this judgment we have noticed some general principles, one of which is, that the previous year is the unit of time on which the assessment is based (section 3). As the taxability of an income is related to its receipt or accrual in the previous year, the moment a dividend is received, whether it is actual dividend declared by the company or is a deemed dividend, income taxable under the residuary head, "income from other sources", arises. The charge being on accrual or receipt the statutory fiction created by section 2(6A)(e) and section 12(1B) would come into operation at the time of the payment by way of advance or loan, provided the order conditions are satisfied.

We do not propose to examine the soundness or otherwise of the illustrations given by Mr. Sharma since they are founded on assumed facts which do not exist in the present case.

For the foregoing reasons we would answer the question proposed in favour of the revenue and dismiss this appeal with costs.

Appeal dismissed.

</html