

The Commissioners of Income Tax - - - - - Appellants

v.

Henry Ignatius Melhado - - - - - Respondent

FROM

THE SUPREME COURT OF BRITISH HONDURAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY, 1949

Present at the Hearing :

LORD PORTER
LORD MACDERMOTT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[Delivered by LORD MACDERMOTT]

This is an appeal by way of Case Stated from a Judgment dated the 16th July, 1946, of the then Chief Justice of the Supreme Court of British Honduras whereby he allowed the respondent's appeal against an assessment to income tax for the assessment year 1945, i.e., the year 1st January to 31st December, 1945.

The appellants in their application for a Case Stated sought to raise the question of the respondent's liability in respect of three items arising on the disputed assessment, on each of which the learned Chief Justice had found in the respondent's favour. These were—(1) the sum of \$3,391.02 claimed by the respondent for depreciation, (2) the sum of \$2,500 which the appellants claimed was not deductible as an expense, and (3) the sum of \$21,925.74 which the appellants submitted was taxable as foreign income received in the Colony through Martin's Bank, London. In their printed case the appellants contended that the ruling on all three items was open for review in this appeal. It is clear, however, that the learned Chief Justice regarded items (1) and (2) as involving issues of fact only, and that he intended to limit the Case Stated to the question whether, on his findings, he was right in law in holding that item (3) should be struck out of the assessment. Before the Board, Counsel for the appellants conceded that items (1) and (2) did not arise for consideration. The position, therefore, is that the present appeal relates to item (3) and to it alone.

Under the provisions of the Income Tax Ordinance (Chapter 23 of the Consolidated Laws of British Honduras, 1924, as amended) tax for the year of assessment is charged upon the chargeable income for a previous period, which is known as the basis period. The principal ground upon which the learned Chief Justice held that the respondent was not liable to tax in respect of any part of item (3) appears in sub-paragraphs (4) and (6) of paragraph 28 of the Case Stated. It was to the effect that income which had accrued to or been received by the taxpayer outside the Colony in one basic period and had been brought into the Colony in a subsequent basic period was not, in point of law, subject to tax under the Ordinance.

During the second day of the hearing before their Lordships Counsel for the parties intimated that, subject to the approval of the Board, a settlement of the matters in dispute in the appeal had been agreed on the following terms:—

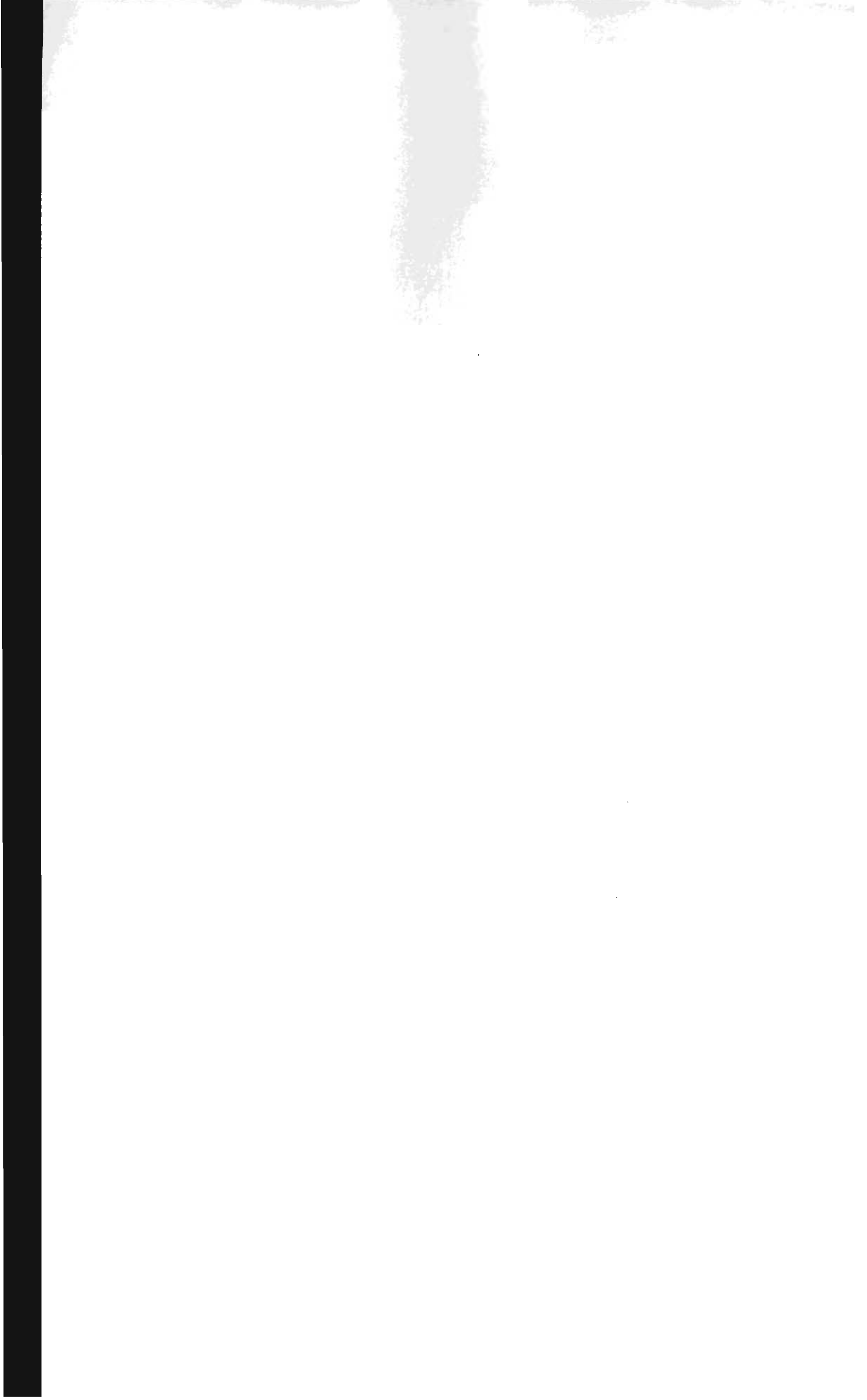
(1) That it be declared that the law as laid down in paragraph 28 (4) and (6) of the Case Stated is erroneous in that there is no requirement of law that, in order to be taxable in the Colony, remitted income must first have arisen to the taxpayer in the year of remittance ;

(2) That the respondent is liable to tax in the year in question in respect of the sum of £3383 6s. 8d.

(3) That the case be remitted to the Supreme Court of British Honduras to amend the assessment accordingly.

Their Lordships are of opinion that the declaration sought accords with the law applicable to the facts of the case and they approve the settlement as reasonable and proper in the circumstances. They will, therefore, humbly advise His Majesty that the appeal be allowed to the extent and in the manner provided by the said terms of Settlement and that the case be remitted to the Supreme Court to amend the assessment in accordance therewith. The parties will bear their own costs of this appeal and of the proceedings in the Colony throughout.

As some criticism has been directed against the appellants and their officials, their Lordships would only add that the proceedings before them have shown nothing to suggest that either body acted otherwise than in the course of their duty.



In the Privy Council

THE COMMISSIONERS OF INCOME TAX

v.

HENRY IGNATIUS MELHADO

DELIVERED BY LORD MACDERMOTT