IN THE PRIVY COUNCIL No. 39 of 1968

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN :

THE WOODEND (K.V. Ceylon) RUBBER & TEA COMPANY LIMITED Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE, COLOMBO Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an Appeal from a Judgment of the Supreme Court of Ceylon (Tambiah and Siva Supramaniam J.J.) dated the 18th day of December 1967 allowing the Appeal of the Respondent from an Order of the Board of Review dated the 29th day of May 1966 whereby an Appeal by the Appellant against the Determination and assessment to tax of the Appellant made by the Respondent in Appeal No. 403 dated the 13th day of July 1965 was allowed. pp.20-34 pp. 7-13 pp. 1-5

2. The principal questions raised in this Appeal are :

(i) Whether the provisions of the Double Taxation Relief Agreement (Treaty Series No. 9 of 1950) concluded between the Government of the United Kingdom and the Government of Ceylon and given the force of law in Ceylon by the Double Taxation (Relief) Act No. 26 of 1950 (Cap. 244) were

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in any way modified, varied, or repealed by the Income Tax (Amendment) Act No.13 of 1959.

(ii) Whether the profits of the Appellant are liable to be taxed at the rate of 33 1/3% of the remittances made to the United Kingdom by the Appellant during the years 1958/59, 1959/60, 1960/61 and 1961/62 by virtue of the provisions introduced by section 53 of the Income Tax (Amendment) Act No.13 of 1959.

3. The Appellant appealed against assessments to tax in respect of profits attributable to its permanent establishment in Ceylon for the years 1958/59, 1959/60, 1960/61, 1961/62 which included amounts calculated at the rate of 33 1/3% upon the remittances made to the United Kingdom by the Appellant as a Company not resident in Ceylon and stated to be imposed by virtue of the provisions of sub-paragraph 1 (a) of Section 53 (C) of the Income Tax Ordinance (Cap. 242) as amended by Act No. 13 of 1959.

p.1 11.21-31. 4. It was agreed that the Appellant was at all material times a Company not resident in Ceylon and that the amounts assessed and the amounts of tax were arithmetically correct.

p.1.1.32-p.3 1.4 5. At the hearing of the said Appeal, it was argued on behalf of the Appellant (inter alia) that Section 53 (C) of the Income Tax Ordinance which was introduced by amending Act No. 13 of 1959 was in conflict with the Double Taxation (Relief) Act, No. 26 of 1950. Articles VI and paragraph (2) of Article XVIII of the said Agreement, in particular, were relied upon.

6. On behalf of the Appellant it was also contended that the assessment machinery contained in Section 53 (C) of the Income Tax Ordinance for assessing taxable profits attributable to the permanent establishment of a company not resident in Ceylon was "other and/or higher and/or more burdensome" than the assessment machinery contained in Section 53 (B) of the Income Tax Ordinance for assessing the taxable profits of a company which was resident in Ceylon and that by virtue

of Article XVIII of the said Agreement the taxable profits attributable to the permanent establishment of the Appellant in Ceylon should be assessed in accordance with the machinery contained in Section 53 (B) of the Income Tax Ordinance. It was further contended that the machinery contained in Section 53 (C) for measuring the tax liability of a non-resident company in respect of its profits imposes an additional rate of tax on its remitted profits so that the tax imposed by this machinery was to this extent, in the nature of a tax on dividends or a tax in lieu of dividends or, alternatively, was in the nature of a tax on undisturbed profits and was therefore contrary to the provisions of Article VI of the Agreement

7. On behalf of the Respondent it was contended (inter alia): p.3 l.5 - p.4 l.7

(i) that each section of the Income Tax Ordinance stood by itself and there was no ambiguity in the tax imposed by each section

(ii) that Section 53 (C) did not refer to, and did not have any connection with, dividends and therefore the tax was neither a tax on dividends nor a tax in lieu of such tax.

(iii) that the tax imposed by Section 53 (C) on non-resident companies was not higher or more burdensome than the tax imposed on resident companies and arithmetical tables were produced in support of this contention.

(iv) that the tax on remittances was not "other" than the tax imposed on resident companies within the meaning of that word in paragraph (2) of Article XVIII of the Agreement because both taxes were Income Tax and only the methods of calculation were different.

8. Articles VI, IX and XVIII of the said Agreement and also the relevant legislation of Ceylon is set out in Annexure "A" hereto.

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p.4 l.8 - p.5 l.24

9. In giving the reasons for the decision on the 13th day of July 1965 in favour of the Respondent, it was stated by the Commissioner of Inland Revenue (inter alia):

(1) that a remittance was not a sum set apart from the paying of dividends

(2) that the tax was chargeable upon a remittance "even if it is made before profits have been determined or the accounts made up" and it was therefore neither a tax on undistributed profits nor a tax on distributed profits.

(3) that Article XVIII was not contravened as no tax other than Income Tax had been imposed.

pp. 6-7

10. By a letter dated the 6th day of August 1965 the Appellant gave notice of appeal to the Board of Review. The grounds of Appeal summarized the arguments that had been advanced before the Commissioner of Inland Revenue and contended that the decision was wrong in law. The said Appeal was duly heard and the Order of the Board was made on the 29th day of May 1966.

pp. 7-13

11. In the said Order, the relevant legislation was reviewed and an agreement between the parties was referred to namely that :-

p. 9 ll. 3-6

"... if there is any conflict between the provisions of Section 53 (C) of the Income Tax Ordinance, and the provisions of the Double Taxation (Relief) Agreement, then it is the provisions in the agreement that must be given effect".

12. The Order then referred to the Income Tax (Amendment) Act No. 13 of 1959 and for the purpose of ascertaining the intention of Parliament, reference was made to certain observations of the Minister of Finance in the Budget Speech of 1958/59 and to Sessional Paper IV of 1960 entitled "Suggestions for a Comprehensive Reform of Direct Taxation by Nicholas Kaldor". The Board of Review then stated that it was clear that the legislature

p.12 ll. 1-32

intended to introduce a form of taxation on dividends and in comparing Section 53 (C) with Section 53 (B) they pointed out that in the former which governed non-resident companies, there was an additional tax of 33 1/3% on remittances subject to a maximum of one ninth of the taxable income where the remittances were greater than one third of the taxable income. This additional provision, according to the Board, was in conflict with the provisions of Article VI of the Agreement and it is respectfully submitted that the Board was correct in law in so finding.

13. The Board of Review also considered paragraph (2) of Article XVIII of the Agreement and stated that its effect was to preclude "any one of the contracting Governments from imposing any discriminatory form of taxation". An exception was specifically made in Article IX of an additional tax of 6% payable by a non-resident company but apart from that, resident and non-resident companies in Ceylon must be treated alike for taxation purposes. The Board again referred to Section 53 (C) and continued: p.12 ll. 33-42

> "If a resident company chose to remit its profits to one of its branches in the United Kingdom, for whatever the purpose, it is not deemed to be a remittance liable to tax. However, if a company resident in the U.K. and trading in Ceylon, had a profit remittance made from its Ceylon office to its Head Office in the U.K. such remittance would attract tax as detailed in Section 53 (C) p.13 ll.17-26
>
> Even though the liability to pay tax on profit remittances comes under the genus of income tax, to which both resident and non-resident companies are subjected to, it is a form of taxation or a kind of tax which is other than that imposed on a resident company."

14. It is respectfully submitted that in the above-quoted passage the Board of Review applied the correct test and came to the

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correct conclusion in holding that the provisions of Section 53 (C) were in contravention of Article XVIII of the Double Tax Agreement with the result that the tax liability in respect of profits attributable to the permanent establishment of the Appellant in Ceylon did not fall to be calculated partly by reference to remittances made by the Appellant to the United Kingdom

15. Pursuant to the provisions of Section 74 of the Income Tax Ordinance, the Respondent applied to the Board of Review on the 28th day of June 1966 requiring a case to be stated for the opinion of the Supreme Court upon the following question of Law:

> "Whether the Woodend (K.V. Ceylon) Rubber and Tea Co. Ltd. being a company resident in the United Kingdom, is not liable to pay tax on remittances under Section 53 (C) of the Income Tax Ordinance, in view of the provisions of Article VI and/or Article XVIII of the Double Tax Agreement (Treaty Series No. 9 of 1950) read with Double Taxation (Relief) Act. No. 26 of 1950."

pp.15-19

16. Accordingly, on the 8th day of September 1966, the Chairman of the Board of Review stated a Case for the Opinion of the Supreme Court. The Case set out the relevant statutory provisions, summarized the submissions made on behalf of the parties, exhibited the Order and set out the following Questions of Law for the Opinion of the Supreme Court :

p.19 ll.21-35

> "(a) Is the imposition of a tax of 33 1/3 per centum of the aggregate amount of the profits remitted a contravention of Article VI of Treaty Series No. 9 of 1950?
>
> (b) Is the imposition of a tax of 33 1/3 per centum of the aggregate amount of the profits remitted a contravention of Article XVIII of Treaty Series No. 9 of 1950 ?"

pp.20-34

17. The principal Judgment of the Supreme Court was delivered by Tambiah J. on the 18th day of

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December 1967 in which he pointed out (inter alia) that the only dispute concerned the additional liability of the Appellant to tax in respect of its profits measured at the rate of 33 1/3% of remittances and that it was common ground that the other rates of tax set out in sections 53 (B) and 53 (C) were within the terms of the Treaty. He further pointed out that whilst it was agreed between the parties when they appeared before the Board of Review, that if there was a conflict between the Income Tax Ordinance and the Double Taxation (Relief) Agreement, then the Agreement should prevail, it had been contended by the Solicitor-General who appeared for the Respondent (the Appellant in the Supreme Court) that he was not bound by any such concession. The Solicitor-General proceeded to advance in argument the converse proposition, namely, that even if there is a conflict between the Agreement and Section 53 (C) introduced by Act No. 13 of 1959 the provisions of the latter should prevail not only because it was a later enactment but also because it was the clear intention of Parliament to do away with the existing scheme of taxation and to provide for an entirely new scheme. He submitted that by necessary implication the Double Taxation (Relief) Act No. 26 of 1950 had been repealed. This question was not submitted for the opinion of the Supreme Court by the Board of Review and it is respectfully submitted it was not open to the Supreme Court to entertain it.

p.23 ll.4-13

p.23 ll.14-39

18. The Appellant submits that the "concession" made by the Respondent to the Board of Review constituted an agreement to a correct proposition of law and that if the present question was open to the Supreme Court, the arguments advanced by the Respondent before the Supreme Court were erroneous. It is respectfully submitted that the provisions of Section 53 (C) are consistent with an intention of Parliament to avoid any conflict with the Double Taxation (Relief) Act No. 26 of 1950 (Cap.244) and/or the Double Taxation Relief Agreement (Treaty Series No. 9 of 1950) concluded between the Government of the United Kingdom and the Government of Ceylon because

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the additional rate of tax (6 per centum) stated to be applicable to non-resident companies was specifically authorised by Article IX of the Treaty Series No. 9 of 1950. Further, it is respectfully pointed out that the Double Taxation (Relief) Act was specifically repealed by the Inland Revenue Act, No. 4 of 1963, S.130 (3), such repeal being stated to take effect from April 1, 1963 which date is later than the years of the assessments concerned in this Case (see paragraph 3 above). It is also submitted that no Treaty Agreement concluded between Governments can be lawfully repealed except in accordance with the requirements of such Agreement itself.

19. The following propositions appear in the Judgment of Tambiah J:

p.27 l.39 – p.28 l.5 (i) Income Tax is inherently a tax on profits of a non-resident company and, therefore, when a tax is imposed on remittances which are sent by way of profits it is only a method of computation of the income tax on profits.

p.29 ll. 1-14 (ii) The Remittance tax is not higher or more burdensome than the tax on dividends imposed on resident companies because the amounts which would have been payable as dividend tax under Section 53 (B) assuming the Appellant to have been resident in the United Kingdom would have exceeded the amounts payable as a remittance tax for the corresponding years.

The Appellant respectfully submits that the first proposition of the learned Judge recited above was correct in law and that the computation of liability to tax by reference to remittances is a formula for measuring the tax liability of a non-resident company in respect of its profits.

The Appellant respectfully submits that the second proposition of the learned Judge is wrong in law and inconsistent with the first proposition recited above because the tax imposed upon the dividends of a resident company

is a tax which falls to be deducted from the dividends payable to shareholders of such a company out of its divisible profits and is not a tax in respect of its profits for the purposes of paragraph 2 of Article XVIII. The Appellant further submits that the tax which falls to be deducted from dividends pursuant to Section 53 (B) is irrelevant in the present context and that a comparison between the machinery contained in Section 53 (B) and the machinery contained in Section 53 (C) reveals a discriminatory form of taxation imposed upon non-resident companies in respect of their remitted profits which is in conflict with Article XVIII of the Agreement. Therefore the mathematical comparison made by the learned Judge on the supposed difference of liability between a resident and non-resident company in Ceylon is not a true comparison as any tax deducted from dividends is borne by the shareholder as opposed to the company.

The Appellant also respectfully submits, in the alternative, that the second proposition of the learned Judge which has been recited above was wrong in law because the machinery contained in Section 53 (C) for measuring the tax liability of a non-resident company in respect of its profits imposes an additional rate of tax on its remitted profits. In the result, the tax imposed in accordance with this machinery was, to this extent, in the nature of a tax on dividends or a tax in lieu of dividends or, alternatively, was in the nature of a tax on undistributed profits and was therefore contrary to the provisions of Article VI of the Agreement.

20. A formal concurring Judgment was delivered by Siva Supramaniam J. and the case was remitted for the tax to be assessed. p.34

21. On the 12th day of January 1968 the Appellant applied for Conditional Leave to Appeal to Her Majesty in Council which application was granted by Order dated the 11th day of March 1968 and Final Leave was granted upon the 8th day of May 1968. pp.35-6 pp. 36-7

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22. The Appellant therefore humbly submits that the Judgment of the Supreme Court dated the 18th day of December 1967 be set aside and that the Order of the Board of Review dated the 29th day of May 1966 be restored and this Appeal be allowed, with costs, for the following, amongst other

R E A S O N S

1. BECAUSE the Double Taxation (Relief) Act was not in any way modified, varied or repealed by the provisions of the Income Tax Ordinance (Cap.242) as amended by Act No. 13 of 1959.

2. BECAUSE tha tax liability of the Appellant in respect of the profits attributable to its permanent establishment in Ceylon does not fall to be computed by reference to profits remitted to the United Kingdom by virtue of Article VI and/or XVIII (2) of the Double Taxation Agreement between the Governments of United Kingdom and Ceylon.

3. BECAUSE of the reasons given by the Board of Review which were correct in law

4. BECAUSE the Questions of Law submitted by the Board of Review were incorrectly answered by the Supreme Court, which answers should have been in the affirmative.

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A N N E X U R E "A"

UNITED KINGDOM

TREATY SERIES NO. 9 (1950)

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CEYLON FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ceylon, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :-

ARTICLE VI

Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any form of taxation chargeable in connection with or in lieu of the taxation of dividends, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

ARTICLE IX

The additional rate of tax chargeable under section 20 (7) of the Ceylon Income Tax Ordinance on companies whose shares are not movable property situate in Ceylon for the purposes of the law relating to estate duty shall not, in the case of companies which are residents of the United Kingdom exceed 6 per cent.

ARTICLE XVIII

(1) The residents of one of the territories shall not be subjected in the other territory to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the residents of the latter territory are or may be subjected.

(2) The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory, and, in the case of companies, to which enterprises of that other territory incorporated in that other territory, are or may be subjected in respect of the like profits.

(3) In this Article the term "taxation" means taxes of every kind and description levied on behalf of any authority whatsoever.

(4) Nothing in this Article shall be construed as -

(a) obliging either of the Contracting Governments to grant to persons not resident in its territory, those personal allowances, reliefs and reductions for tax purposes which are, by law, available only to persons, who are so resident.

(b) affecting the additional rate of tax with which Article IX is concerned.

DOUBLE TAXATION (RELIEF) ACT NO. 26 OF 1950 (CAP 244)

2. (1) Where the Senate and the House of Representatives by resolutions approve any agreement, entered into between the Government of Ceylon and the Government of any other territory, for the purposes of affording relief from double taxation in relation to income tax and profits tax under Ceylon law and any taxes

of a similar character imposed by the laws of that territory, the agreement shall, notwithstanding anything in any other written law, have the force of law in Ceylon in so far as it provides for relief from income tax or profits tax, or for charging the profits or income arising from sources in Ceylon to persons not resident in Ceylon or determining the profits or income to be attributed to such persons and their agencies branches or establishments in Ceylon, or for determining the profits or income to be attributed to persons resident in Ceylon who have special relationships with persons not so resident

2. (5) The agreement between the Government of the United Kingdom and the Government of Ceylon dated 26th July, 1950 the text of which was reproduced in Treaty Series No. 9 (1950) and tabled in the Senate and the House of Representatives on 15th August, 1950 and 31st July, 1950, respectively, shall be deemed for all purposes to have been approved by the Senate and the House of Representatives under subsection (1) of this section, and shall have the force of law in Ceylon in terms of that subsection;

53.(B) (1) In respect of any year of assessment commencing on or after April 1, 1958, the tax to which a company resident in Ceylon in the year preceding such year or assessment shall be liable shall consist of -

(a) a sum equal to 45 per centum of the taxable income of such company for such year of assessment, and

(b) a sum equal to 33 1/3 per centum of the aggregate amount of the gross dividends distributed by such company out of the profits on which the taxable income of such company is computed for such year of assessment

Provided that where it is proved to the satisfaction of the Commissioner that a resident company -

(i) being a company which has ceased to have the exemption from tax under section 7a or section 7b, has not made an average annual profit of more than one hundred and fifty thousand rupees computed by reference to any three consecutive years of assessment after that company ceased to have that exemption, or

(ii) had as average profits or income for each of the last three years of assessment an amount not exceeding one hundred and fifty thousand rupees and either fifty per centum or more of the shares in the capital of that company during the last three years of assessment were held by any individual or family to whom that company was the chief source of income, or fifty per centum or more of the share in the capital of that company are owned by shareholders none of whom has an annual income from all sources exceeding thirty thousand rupees, there shall be deducted from the amount of tax computed under paragraph (a) of this sub-section in respect of that company a sum equal to one half of the tax under that paragraph on the first Rs. 50,000 of the taxable income of that company for the year of assessment, or a sum equal to one third of the

tax under that paragraph on the amount by which one hundred and fifty thousand rupees exceeds the amount of the taxable income of that company for the year of assessment, whichever sum is less

(2) Where a dividend is paid by any resident company to any other resident company and tax in respect of that dividend is paid by the first mentioned company and that dividend is included in the assessable income of such other company, that dividend shall, notwithstanding anything to the contrary in any other provision of this Ordinance, be deducted from such assessable income in arriving at the taxable income of such other company.

3. In sub-section (1), "amount of the gross dividends" of a company means the amount of the dividends before such deductions as the company is entitled to make under this Ordinance for tax are made from the dividends.

4. The provisions of paragraph (a) or paragraph (b) of sub-section (1) may be amended by resolution of the House of Representatives.

53 (C) (1)

In respect of any year of assessment commencing on or after April 1, 1958, the tax to which a non-resident company shall be liable:-

(a) shall, where there are remittances of such company in the year preceding such year of assessment, consist of a sum equal to 45 per centum, and an additional 6 per centum, of the taxable income of such company for such year of assessment and a sum which shall, if the aggregate amount of such remittances is less than one third of such taxable income, be equal to 33 1/3 per centum of such aggregate amount and, if such aggregate amount is not less than one third of such taxable income, be equal to 33 1/3 per centum of such taxable income; and

(b) shall, where there are no such remittances, consist of a sum equal to 45 per centum and an additional 6 per centum and of such taxable income.

2. In sub-section (1), "remittances", with reference to a non-resident company, mean -

(a) sums remitted abroad out of the profits of the company,

(b) such part of the proceeds of the sale abroad of products exported by that company as is retained abroad, and

(c) in respect of any products exported by that company and not sold in a wholesale market or not sold at all, such part of the profits deemed under section 38 to be derived from Ceylon as is retained abroad.

Where a dividend is paid by any resident company to any non-resident company and from that dividend the resident company has deducted such tax as it is entitled under sub-section (1) of section 53(D) to deduct and that dividend is included in the assessable income of the non-resident company, then, in order to arrive at the taxable income of the non-resident company for the purposes only of computing the sum equal to 45 per centum of the taxable income referred to in sub-section (1), that dividend shall, notwithstanding anything to the contrary in any other provision of this Ordinance, be deducted from such assessable income in arriving at the taxable income of the non-resident company.

The rates of the tax specified in sub-section (1) may be amended by resolution of the House of Representatives.

53 (D)

(1) Subject to the provisions of sub-section (2) and sub-section (3) every resident company shall be entitled to deduct, from the amount of any dividend which becomes payable during any year of assessment commencing on or after April 1, 1959, to any shareholder in the form of money or of an order to pay money, tax equal to 33 1/3 per centum of such amount

(2) The Commissioner may give notice in writing for any year of assessment commencing on or after April 1, 1959 to a resident company

requiring it to deduct from the amounts of dividends payable to a particular shareholder tax on such amounts at a rate greater than 33 1/3 per centum but not greater that the highest rate at which tax is chargeable for such year of assessment on the taxable income of an individual; and where such notice is given, such company shall deduct from the amounts of all dividends payable during such year of assessment to such shareholder tax on such amounts at the rate specified in such notice; and such part of the tax required to be so deducted as exceeds 33 1/3 per centum of the amounts of such dividends shall be a debt due from such company to the Crown and shall be recoverable forthwith as such, or may be assessed and charged upon such company in addition to any tax otherwise payable by it.

(3) Where a resident company has obtained or is entitled to obtain relief in respect of double taxation under the provisions of section 45 or section 46, the rate at which such company may deduct tax from the dividends payable during any year of assessment commencing on or after April 1, 1959, shall be reduced as the Commissioner may direct.

(4) Notwithstanding that the whole or any part of the amount of a dividend payable to any shareholder during any year is exempt from the tax by virtue of section 7(B) any deduction which may be made under the preceding provisions of this section shall be calculated on the total amount of the dividend; and where such deduction is made -

(a) if the whole of the amount of the dividend is exempt from tax, there shall be due from the Company as a debt to the Crown, the total sum actually deducted under such preceding provisions; and

(b) if only a part of the amount of the dividend is exempt from the tax, there shall be due from the company as a debt to the Crown the difference between -

(i) the total sum actually deducted under such preceding provisions, and

(ii) the sum which would have been deducted thereunder if the dividend had reduced by such part thereof as is exempt from the tax.

Any such debt shall be recoverable forthwith or may be assessed and charged upon the company in addition to any tax otherwise payable by the company under this Ordinance.

(5) Every person who issues a warrant, cheque or other order drawn or made in payment of any dividend which becomes payable by a resident company during any year of assessment commencing on or after April 1, 1959, shall annex thereto a statement in writing showing -

(a) the gross amount which after deduction of tax thereon corresponds to the net amount actually paid;

(b) the sum deducted as tax; and

(c) the net amount actually paid

(6) Where the assessable income of a person includes a dividend from a resident company in the form of money or of an order to pay money, he shall be entitled, on production of a statement relating to such dividend made in accordance with sub-section (5), to a set-off against the tax payable by him of the amount of tax shown on such statement;

Provided that where the rate at which tax may be deducted from such dividend has been reduced under the provisions of sub-section (3), the set off shall be adjusted as the Commissioner may direct.

(7) Where for any year of assessment commencing on or after April 1, 1960, the assessable income of a person includes a dividend from a resident company in the form of shares or debentures, he shall be entitled to a set-off, against the tax payable by him, of an amount equal to that which the company is entitled under sub-section (1) to deduct as tax on such dividend.

(8) Where the assessable income of a person includes a dividend from a company which, although not resident in Ceylon, has paid Ceylon income tax on any part of its profits, he shall be entitled to a set-off of tax in respect of a similar part of the dividend, the amount of which shall be decided by the Commissioner"..

INLAND REVENUE ACT, No.4 of 1963

10 130 (3) The Double Taxation (Relief) Act is hereby repealed with effect from April 1, 1963.

No. 39 of 1968

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N

WOODEND (K.V. CEYLON)
RUBBER & TEA CO. LTD. Appellant

- V -

THE COMMISSIONER OF
INLAND REVENUE COLOMBO Respondent

CASE FOR THE APPELLANT

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