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(1969) 05 CAL CK 0007

Calcutta High Court

Case No: None

LITTLEWOODS MAIL ORDER STORES LTD.		APPELLANT
	Vs	
INLAND REVENUE COMMISSIONERS SAME v. MCGRFGOR (INSPECTOR OF TAXES).		RESPONDENT

Date of Decision: May 6, 1969

Acts Referred:

- Companies Act, 1948 - Section 150, 152
- Income Tax Act, 1952 - Section 137

Citation: (1970) 75 ITR 327

Hon'ble Judges: Salmon, J; Sachs, J; Plowman, J; Karminski, J; Fenton Atkinson, J

Bench: Full Bench

Judgement

July 22. PLOWMAN J. - These are two appeals by Littlewoods Mail Order Stores Ltd. (which I shall call "the company", one against assessments to income tax for the years 1960-61, 1961-62 and 1962-63, the other against assessments to profits tax for chargeable accounting periods in the years 1959, 1960 and 1961. It is common ground that the decision in the profits tax case must follow that in the income tax case, and it is, therefore, with the latter that I will deal.

The company carries on the business of selling a wide variety of goods in stores in London and the provinces. It also conduct a mail order business. This case relates to the profits of the companys trade. At all material times the company has had a large shop and offices in Oxford Street, London, in a building known as Jubilee House, which it has occupied exclusively for the purposes of its trade. Down to December 7, 1958, the company held the premises under a long lease from the freeholders, the Independent

Order of Oddfellows. The term of the lease was 99 years from 1947. In 1958 there were, therefore, still 88 years to run. The rent was pound 23,444 a year.

In December, 1958, a scheme was put into operation as a result of which, by December 11, the following transformation had taken place : the freeholders had become Fork Manufacturing Co. Ltd. (which I shall call "Fork"), a wholly owned subsidiary of the company; the Oddfellows had become lessees of Fork under a head lease for a term of 22 years and 10 days at a rent of pound 6 per annum; the company had become tenants of the Oddfellows for a term of 22 years at a rent of pound 42,450 per annum; and the companys 99-years lease had been surrendered. The result, therefore, was that while the company remained in occupation of Jubilee House, it did so for a shorter term at a higher rent in place of its longer term at a lower rent; at the end of 22 years its liability for rent would case; and ten days latter the Oddfellows would disappear and the company would be in control of the freehold through its wholly owned subsidiary, Fork.

It is common ground that the commercial rack rent of Jubilee House was at all material times not less than pound 60,000 per annum, and that the aggregate of the market values of the companys 22-years underlease and Forks freehold immediately following the transactions to which I have referred was not significantly greater than the market value of the companys 99-year lease immediately prior to those transactions. The question which I have to decide is whether, in computing the profits of its trade under Case I of Schedule D, the company is entitled to deduct the whole of the annual rent of pound 42,450 or only, as the Crown says, pound 23,444; that is to say, the amount of the rent payable under the lease which had been surrendered.

Since the company had no right after December 11, 1958, to occupy Jubilee House except on the terms of paying pound 42,450 per annum rent, it is difficult to see why that rent should not be a proper, indeed a necessary, deduction from the companys receipts in order to ascertain the profits of its trade, since without paying it the company could not trade at all. The Crown, however, submits that the deduction of more than pound 23,444 is prohibited by section 137 of the Income Tax Act, 1952. The Crown relies on paragraph (a) and (f) of that section. [His lordships read section 137 (a) and (f).]

What is said is that the difference between pound 42,450 and pound 23,444 - namely, pound 19,006 - was money spent for the acquisition of a capital asset - namely, the freehold - and was not, therefore money wholly and exclusively laid out or expended for the companys trade. Alternatively, and for similar reasons, it is said that pound 19,006 was capital withdrawn from or a sum employed or intended to be employed as capital in the companys trade.

I see no justification for treating the rent of pound 42,450 payable by the company under the underlease as if it were attributable to two different things; namely, a true rent of pound 23,444 per annum payable for the right to occupy the property, and an additional sum of pound 19,006 per annum payable for the acquisition of a capital asset. The truth

of the matter, as I have indicated, seems to me to be that the company became bound to pay pound 42,450 per annum - a rent which was only about two-third of the rack rent - for the right to occupy the property and to trade there, and that this payments has to be deducted before a proper balance of profit can be reached. It is true that the transaction in question resulted in the company through its subsidiary, acquiring a capital asset in the form of the freehold. But as Mr. Heyworth Talbot said, all that the company really did was to exchange one capital asset, its 99-year lease, for another of approximately equal value; and why, he asked rhetorically, should it not be a sound commercial bargain from the point of view of the company, as traders, to pay a higher rent for a shorter term on the footing that after the expiration of the shorter term it paid no rent at all? I agree.

Mr. Heyworth Talbot submitted that this view of the case was really concluded in his favour by a decision of the Court of Appeal in Inland Revenue Commrs. v. Land Securities Investment Trust Ltd. which is not yet reported. It was decided at first instance by Cross J. The judgments of the Court of Appeal were delivered on May 20, 1968, and I have been supplied with a transcript.

I will read the headnote to the report in the Chancery Division for the facts and Cross J.s decision. The headnote is as follows :

"The taxpayer company was the tenant of certain properties which it held for long terms under leases and underleases at rents totalling pound 62,500 per year. In 1960 the company purchased the freehold and leasehold interests of its landlord in consideration for rentcharges on the properties amounting to pound 96,000 per year for ten years; the company thereby became liable for head rents totalling pound 22,000 per year for the remainder of the terms of the leaseholds which were for up to 75 years. The company deducted income tax when paying the rentcharges on the footing that they were covered by section 177 of the Income Tax Act, 1952, and claimed that the gross payments were deductible in computing the companys liability to profits tax. The special commissioners held that the payments were covered by section 177 being rentcharges reserved on land, that, for the purposes of that section, it was irrelevant to inquire whether they contained a capital element, and that the rentcharges were not payments of a capital nature within section 14(1) of the Finance (No. 2) Act, 1940, and were thus deductible for the purposes of profits tax. The Crown appealed :-

"Held, allowing the appeal, (1) that the company had purchased a capital asset, that a capital asset could be acquired in consideration of payments wholly of an income character, but that it was possible to have a rentcharge charged on land only part of which was a rentcharge for the purpose of the Income Tax Acts and that the payor was only entitled to deduct tax u/s 177 from that part of it which represented interest, as opposed to payment of the capital value..... (2) That when dissecting the rentcharges to determine how much represented income, the court could have recourse to outside evidence."

It is to be noticed that the case was profits tax case, but its relevance to the present case is this : that although Land Securities was not a trading company and, therefore, not chargeable to income tax under Case I of Schedule D, the relevant profits tax legislation required its profits to be computed as if it were, subject to certain refinements which I need not, I think, explore. The relevant legislation is set out in footnotes in the report.

Pace Mr. Kerr for the Crown, the question which the Court of Appeal had to consider was not merely whether tax was deductible by Land Securities in paying the rentcharges, but also whether, if Land Securities had been a trading company and one had to compute its profits under Case I of Schedule D, the deduction of the rentcharges would have been prohibited on the ground that they were payments of a capital and not a revenue character. This, I think, is clear from the case stated, which is set out in the report at first instance, and from the judgment of Cross J.

The Court of Appeal were, therefore, concerned with and decided two things : first, that income tax was properly deducted in paying the rentcharges; secondly, that the rentcharges were deductible in computing Land Securitys profits for profit tax purposes. The Court of Appeal decided that Cross J. was wrong in dissecting the rentcharges in order to determine how much represented income and how much capital.

Danckwerts L. J. set out the decision of the special commissioners, and as he concluded his judgment by saying that he agreed with it, I will read it :

"We, the commissioners who heard the appeal, decided as follows : (1) We held that the referenced in section 177 to "any.... rentcharge" was an unqualified reference to any rentcharge reserved or charged upon land; that the rentcharges reserved by the deeds of transfer were rentcharges reserved or charged on land; that in determining whether section 177 applied to such rentcharges, it was irrelevant to enquire whether on dissection (if any dissection be allowable in law, and we thought it was not) they contained a capital and income element; that the said rentcharges were rentcharges from which section 177 authorised the company to deduct income tax. (2) The only other issue before us we understood to be that deduction of the rentcharges in computing the assessable profits was prohibited by section 14(1) of the Finance (No. 2) Act, 1940 : the rentcharge being (it was contended) payments made to secure capital assets.

"Then they continued : The only assets which might be said to have been acquired by the company under the transfers were the reversion to their leases and underleases. Having regard to the length of time unexpired on the latter it seemed to us doubtful whether these reversions had any real monetary value. From a commercial point of view we thought the reality of the matter was that the company had substituted larger rents for a ten-year period for smaller rents for varying longer periods. The payments claimed were in their nature rents and as such were income payments properly deductible in computing the companys profits. We left figures to be agreed,"

and Danckwerts L. J. said, "and I think that is all I need read." Later he said :

"Cross J., with second-sight or otherwise, found a capital ingredient in these rentcharges and the course which he adopted was to send back the case to the special commissioner so that they, in effect, might dissect these annual rentcharges and separate the capital element from the income element for the purposes of the provisions of the Act. I am bound to say I find it difficult to agree with his decision. In the first place it is to be observed, as has already been stated in the case by the commissioners, there never was any agreement as to any capital sum. No doubt it may be that the church commissioners [the landlords] were disposing of a capital asset, but they were disposing of a capital asset entirely for a consideration expressed in the form of the rentcharges which were agreed between the parties."

Then, later, after referring to the principle that a taxpayer is entitled to arrange his affairs in such a way as to produce the minimum amount chargeable to tax, he said this :

"There is no suggestion that the transaction was not a perfectly bona fide one with the intention of creating rentcharges, and rentcharges, unless there is some element in the transactions which shows that a different construction should be applied, are payments of income and nothing else, it seems to me.

"In the present case the Crown desired to introduce some evidence, which was objected to and therefore, I think properly, not given, that the parties might have had some sort of calculations in their minds in reaching the figures which were eventually decided upon for the rentcharges. Well, it may be so, but they were entitled to carry out the transaction in the manner which they adopted and the notable feature of the present case, compared with the various authorities to which we have been referred, is that there is no lump sum throughout mentioned in any way whatsoever. In my view, this is simply a case where the church commissioners [the landlords] disposed of their assets for a number of rent charges which were income payments and received a higher income for ten years, and that appears to be the purpose they had for the transaction. On the other hand, the purchasing companies were prepared to pay a higher rent for a limited period with a view to getting a more favourable financial position at the end of that period. It is a perfectly straightforward transactions, as I see it, and it seems to me that the special commissioners reached the right conclusion. I would allow the appeal and restore the decision of the special commissioner."

Then Salmon L. J. said :

"To my mind, the commissioners basic finding here is that from a commercial point of view there was in reality a substitution of larger rents over a ten years period for smaller rents over longer periods of varying duration. The payments were in their nature rent, and as such were income payments properly deductible in computing the appellants profits.

It is conceded that one can transmute a capital asset into a right to receive income. Rent and rentcharges, prima facie, are income. There certainly were no facts to contradict that presumption or to support that the findings of the commissioners were not entirely justifiable. On that hypothesis, there is merely an exchanges of rents; instead of smaller rents being paid for very long periods, larger rents were payable over a shorter period. In my view, the commissioners were entitled to come to the conclusion that these were income payments and income receipts, and for my part I cannot agree with the judge in holding that that decision as wrong."

Fenton Atkinson L. J. agreed that the appeal should be allowed.

As there, so here the mere fact that a fixed capital asset is acquired by periodic payments does not, in my judgment, prevent those payments from being of an income character or justify their dissection, and I can see no material difference between the rentcharges in that case and the rent in this.

For these reasons I allow the appeal, and I need only mention briefly an alternative argument which Mr. Heyworth Talbot submitted on behalf of the taxpayers. It was this : that in computing profits for the purposes of Case I of Schedule D, what has to be ascertained is the profit arising from the trade, and that this profit must not be inflated by including in it monetary advantages accruing to the trader in his capacity as a property owner which were exclusively within the ambit of Schedule A, which still existed at the time with which I am concerned. In other words, if one is obliged to split the sum of pound 42,450 into two component parts of pound 23,444 and pound 19,006, the latter sum must be deducted from the receipts of the taxpayers trade because it was expended by the taxpayers not as a trader but a property owner. The Crown replied that there is no warrant for this contention either in section 137 or in the general law. In view of my decision on the point, I need not pursue this aspects of the matter.

Finally, I should mention Mr. Kerrs submission that he had certain findings of fact in his favour, and that on the Edwards v. Bairstow principle I ought not to interfere with them. The findings on which Mr. Kerr particularly relied were, I think, first, that in paragraph 3 (11) of the case stated, which is as follows :

"The taxpayers entered into the above-mentioned transactions with the Oddfellows and Fork with the object of obtaining for its subsidiary Fork the freehold revision in Jubilee House while retaining for the taxpayers the occupation of Jubilee House under the underlease dated December 10, 1958;"

and, secondly, that in paragraph 6(4) and (5), of the case stated, Part of sub-paragraph (4) is as follows :

"Before the transactions took place the taxpayers possessed the right to occupy Jubilee House, the open market rental of which was not less than pound 60,000 for 88 years at a rent of only pound 23,444. The taxpayers gave up this advantages position in exchange

for a much shorter underlease for 22 years and became liable to make an increased payment of pound 42,450. A further result of the transactions as that a capital asset, namely, the freehold of Jubilee House became vested in Fork, a wholly-owned subsidiary of the taxpayers. We find that it was clearly an advantage to the taxpayers that Fork should acquire this freehold, particularly as the taxpayers were in occupation of adjoining premises, and we draw the inference that it was a purpose of the taxpayers in accepting liability for payment of an additional pound 19,006 to achieve this result."

Then, subparagraph (5);

"We hold that, to the extent of pound 19,006, the payment of pound 42,450 in each of the periods in question was not money wholly and exclusively laid out or expended for purposes of the taxpayers trade. In the circumstances of this case we hold that there is no principle of law preventing the application of section 137 and that, for the purpose of computing the profits of the taxpayers trade, deduction of the above-mentioned amount of pound 19,006 is prohibited by paragraph (a) and (f) of section 137."

In my judgment, the special commissioner were wrong, and there is nothing there which ought to inhibit me from reaching the conclusion which I have reached and which seems to me the only proper conclusion on the primary facts of this case.

Michael Kerr Q. C., Patrick Medd and J. P. Warner for the Crown.

F. Heyworth Talbot Q. C. and K. B. Suenson-Taylor for Littlewoods.

LORD DONNING M. R. - Littlewoods Mail Order Stores Ltd. carry on a big business at Jubilee House in Oxford Street. In 1947 the building was bought by Oddfellows Friendly Society for pound 605,000. The Oddfellows let it is Littlewoods on a 99-year lease at a rent of pound 23,444 a year. The rent gave the Oddfellows a return of only 3 7/8ths per cent. on their outlay During the next 11 years the value of money got much less. In 1958 the building was worth about pound 2,000,000 if sold with vacant possession. And the rent obtainable on a tenancy from year to year granted in 1958 would be pound 60,000 a year. Yet Littlewoods had a lease with another 88 years to go at a rent of pound 23,444.

Such being the position, in 1958 the advisers of Oddfellows and Littlewoods carried through a deal which was designed to confer a considerable advantage on both of them. It came to this : the Oddfellows transferred the freehold in Jubilee House to the Fork Manufacturing Co. Ltd., which was a wholly-owned subsidiary of Littlewoods. The Fork Company let Jubilee House to the Oddfellows for 22 years and 10 days at a rent of pound 6 a year. The Oddfellows granted an unberlease to Littlewoods for 22 years at a rent of pound 42,450 a year. The result was that Littlewoods gave up their lease for 88 years at a rent of pound 23,444 and took instead a lease from the Oddfellows for 22 years at pound 42,450 : and, in addition, Littlewoods, through their wholly-owned subsidiary, the Fork Manufacturing Co. Ltd., at the end of the 22 years, would have the entire freehold in hand in possession. In return the Oddfellows received a rent of pound 42,450 for 22 years and

then lost all interest in the premises.

The deal was designed to advantage both in this way : on the one hand Oddfellows would receive a rent of pound 42,450 a year for 22 years, which would be clear of tax as they were a charity. On the other hand, Littlewoods would claim to deduct the full rent of pound 42,450 from their profits instead of the smaller sum of pound 23,444. So they would escape a lot of tax. The deal would be to the advantage of both sides, at the expense of the revenue.

This plan was put into operation by six deeds executed on six days, one day after another : Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday from December 8 to 13, 1958. Each was executed in escrow pending the determination of the stamp duty. (For, in addition to the tax benefits, the parties tried to save a lot of stamp duty. The question of stamp duty went up to the House of Lords; Littlewoods Mail Order Stores Ltd. v. Inland Revenue Commissioners.) The deeds have come into force. And the question of tax comes before us.

The short point is whether Littlewoods can deduct from their profits the whole of the new rent, pound 42,450 a year. The years concerned are 1960/61, 1961/62 and 1962/63 for income tax; and 1959, 1960 and 1961 for fall together.

Littlewoods say :

"This rent of pound 42,450 a year is rent properly payable for the premises at which we carry on business. It is a fair rent. It is, indeed, less than a rack rent. We should be allowed it as a deduction, as one of the expenses of carrying on our trade."

The revenue say that the rent was not solely a rent. Previously Littlewoods paid pound 23,444 a year. Now they pay pound 42,450. The excess of pound 19,006 was paid to acquire a capital asset, namely, the freehold. In so far as it was so used, it is not deductible. The revenue rely on two sub-section in the Income Tax Act, 1952, which they say prohibit the deduction. The first is section 137(a) which says that no sum shall be deducted in respect of "any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation."

The second is section 137(f) which says that no sum shall be deducted in respect of "any capital withdrawn from, or any sum employed or intended to be employed as capital in, such trade, profession of vocation."

The commissioner held in favour of the revenue. They said;

"We hold that, to the extent of pound 19,006, the payment of pound 42,450.... was not money wholly and exclusively paid out or expended for the purposes of the companys trade," but for acquiring a capital asset.

Plowman J. decided in favour of Littlewoods, relying on the decision in this court in Inland Revenue Commissioners v. Land Securities Investment Trust Ltd. But that decision has only last week, on April 29, been reversed by the House of Lords. The decision of the House throws a flood of light on the problem. In that case the land Securities Investment Trust Ltd. (which was a property-holding company) acquired from the Church Commissioners the freehold and leasehold interests in many properties and in return granted rentcharged out of those properties. The rentcharges came to pound 96,000 a year for ten years payable by the company to the Church Commissioners. The company claimed to deduct those rentcharges in full in calculating their profits for profits tax. The House of Lords said "No" Lord Donovan said, at page 612 :

"the legal result was that the company purchased reversion which were capital assets in its hands.... on ordinary principles of commercial accounting these rentcharges should not be debited against the incomings of the companys trade in order to compute its profits liable to profits tax."

It appeared, however, that some element of interest had been used to calculated the amount of the rentcharges (rather like finance charges in a hire-purchase case). So that the rentcharges were regarded in part as the down-price for the capital asset, and in part as interest on the balance outstanding from time to time. The "interest content" was allowable as a deduction but not the "capital content."

That case would be virtually indistinguishable from the resent case but for the interpretation in this case of the wholly-owned subsidiary, Fork Manufacturing Co. Ltd. If that subsidiary were identified with Littlewoods so as to be one with Littlewoods, the net result of the transaction would be that Littlewoods would give up the 88 years outstanding at pounds 23,444 a year, and would get instead the freehold of Jubilee House, paying therefore a rent of pounds 42,450 a year for 22 years. The case would then be on a par with the Land Securities case. Littlewoods would acquire the freehold of Jubilee House (a capital asset) by means of paying an extra pounds 19,006 a year (pounds 42,450 less pounds 23,444) for 22 years; and nothing thereafter. The extra pounds 19,006 would be paid for the capital asset and not be deductible. Mr. Heyworth Talbot was inclined to agree that the cases would be indistinguishable; but he said that the interposition of the Fork Manufacturing Co. Ltd. made all the difference, albeit it was a wholly-owned subsidiary of Littlewoods. He said that the Fork Manufacturing Co. Ltd. was to be regarded as a separate and independent entity, just as if its shares were owned by someone quite unconnected with Littlewoods. In that case the freehold of Jubilee House would be acquired by the Fork Manufacturing Co. Ltd. Littlewoods would have acquired no capital assets at all. They would be able to deduct the whole pounds 42,450 a year.

I cannot accept this argument. I decline to treat the Fork Manufacturing Co. Ltd. as a separate and independent entity. The doctrine laid down in Salomon v. Salomon Co. has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true.

The courts can and often do draw aside the veil. They can, and often do, pull off the mask. They look to see what really lies behind. The legislature has shown the way with group accounts and the rest. And the courts should follow suit. I think that we should look at the Fork Manufacturing Co. Ltd. and see it really is - the wholly-owned subsidiary of Littlewoods. It is the creature, the puppet, of Littlewoods, in point of fact : and it should be so regarded in point of law. The basic fact here is that Littlewoods, through their wholly-owned subsidiary, have acquired a capital asset - the freehold of Jubilee House : and they have acquired it by paying an extra pounds 19,006 a year. So regarded, the case is indistinguishable from the Land Securities case. Littlewoods are not entitled to deduct this extra pounds 19,600 in computing their profits.

There is another point which is the subject of a cross-notice. It arises because in the years in question here, Schedule A was still in force. The company contended that, if the rent of pounds 42,450 was not allowed as a deduction, the profits of the companys trade would be unduly inflated. The argument, as I understood it, was that the company had two occupations; (1) as a trader : (2) as a property-owning company : and that owing to the impact of Schedule A, the two had to be kept separate. I do not think much of that point, and it was not pursued. I would, therefore, allow this appeal.

SACHS L.J. - In this case the anatomy of the transaction has been with admirable frankness and clarity laid before the court for inspection. By virtue of the correspondence that preceded the six deeds, it is displayed naked and without even such clothing as might have been afforded by those six deeds executed on six succeeding days but held in escrow until brought into operation on November 18, 1959.

This transaction thus inspected provides the clearest possible example of the acquisition by a taxpayer of capital assets by payment of instalments over 22 years. It is perhaps not without interest to refer to some of the terms of a letter written on February 25, 1958, on behalf of the Oddfellows when they were seeking to persuade Littlewoods into the transaction. One paragraph reads;

"Consequently, over the proposed term of 22 years my clients would have to set aside out of the rental they received sufficient sums to write off their capital investment and your clients would, of course, immediately become the freeholders subject to the payment of a rent charge, and in 22 years time they would, in effect, have purchased my clients freehold interest by means of payments of rent."

That was followed a little later by a phrase which naturally calls for some attention by its frankness : "On the other hand, I think the whole attraction of the suggestions I have made arises out of the taxation position."

In such circumstances there would really be non more to be said on the relevant issues than that the law applicable has been determined by the decision of the House of Lords in the Land Securities case as pronounced last week - were it not for one fact round which

Mr. Heyworth Talbots submissions in this court were centered. That Fact is that whereas in the Land Securities case the freeholds were vested in Land Securities themselves (save in one case where it was vested in a subordinate company which had originally held the leasehold interest), in the instant case the freehold was vested in the Fork subsidiary. The Fork subsidiary, it is to be observed, was stated at the Bar to be a property-holding company. It may hold other properties, but by the look of the accounts presented to this court for inspection, it would appear that it held few, if any, other assets beyond those conferred upon it by the six deeds to which reference has already been made

The points which revolved on that fact emerged rather late in the day before this court; their importance really came to notice during the latter portion of the address of Mr. Heyworth Talbot. They were not points which were stressed - if made at all, before Plowman J. In those circumstances this issue and its manifold implications - and there are some important implications - were not perhaps fully canvassed. Suffice it to say that for the company it was urged that the above fact made all the difference. For the Crown it was urged that it made none.

It is an issue to be approached with some caution; for at one stage it seemed as if the Crown might be on the verge of seeking to erode the principle that for tax purposes every company, whether it be a subsidiary or not, has its own separate legal entity. All the more did it appear that that erosion might be sought when one observed that even today there can be no question of any statutory grouping of the Fork company with Littlewoods for tax purposes, for the simple reason that the two companies do not carry on the same trade. There was certainly no such grouping in the days with which the instant assessments are concerned.

Any attempt however, thus to erode that important principle was firmly disclaimed by Mr. Kerr, who without qualification agreed that Fork and Littlewoods were separate entities for the purposes of tax legislation; moreover, nothing in this judgment of nine is intended to have any such erosive effect.

The essence of the Crowns submission in the instant case was that, as in the Land Securities case, one has to examine the true nature of the transaction and then arrive at a conclusion as to how, on the principles of proper commercial accounting, one should allocate the two segments of the overall annual payments of pounds 43,450. It was to the same principles of correct commercial accounting that Lord Donovan referred in his speech in the Land Securities case.

It is true that Mr. Kerr relied on, or at any rate, referred to, sections 150 to 152 inclusive of the Companies Act, 1948, and to the emphasis they place on group accounts giving a true picture as a whole. But for my part I found but little assistance in those sections. Indeed some of the angles of approach introduced by the Crown seemed to involve considerable difficulties as to how the accounts of individual members of a group should

be made out when those members carry on different trade activities. There can be cases where expenditure on making or acquiring an item (for example, a steel girder) may be a trade expense so far as one member company is concerned, but the expenditure of another member on acquiring that item from the first may, having regard to the purpose for which it is to be used, be a capital expense. So to my mind the present case should be resolved without resort to any complicated approach.

One has here simply to look at the true nature and purpose of the expenditure each year of the pounds 42,450. In so doing, despite the contrary submissions of Mr. Heyworth Talbot, it seems to me that the Land Securities case permits the court to dichotomise that expenditure. On that footing pounds 19,006 was clearly expended for the purpose of acquiring a capital asset which happened to have been put into the ownership of Fork. It is thus in truth expenditure of a capital nature to secure the advantage of an enduring benefit. It was also an expenditure that was not made wholly and exclusively for the trade purposes of the appellant company during the relevant years under consideration by the commissioners (see section 137 (a) of the Act of 1952). In those circumstances, it seems clear to me that this appeal must be allowed.

KARMINSKI L.J. - I agree that this appeal must be allowed and desire to say only a very few words of my own on the question of the subsidiary company, Fork Manufacturing Co. Ltd. Mr. Heyworth Talbot, in what I hope I may be allowed to describe as a rearguard action conducted with enormous skill and equal good humour had to rely on the confusion created by the subsidiary company in order to distinguish this case from the decision of the House of Lords in Inland Revenue Commissioners v. Land Securities Investment Trust Ltd. and his contention, as I understood it, was rightly that Fork and the respondents to this appeal, Littlewoods, are two separate entities in law. There is no doubt as to the correctness of that submission, based as it is on the rule in Salomon v. Salomon and Co. of many years standing. But it is necessary here, as I think, to look at what I believe to be the realities of this situation. Littlewoods are, as we have heard, a large and important trading company. The Fork Manufacturing Co. Ltd. is shown by its balance sheet, which we have seen, to be not only a separate entity, but one which is a creation of, or at any rate, completely dependent on the respondent company. I say that for this reason : we have the balance sheets for a number of years, beginning with the year ending December, 1959, and finishing with the balance sheet for the year ending December, 1962. The authorised capital of Fork was 20,000 shares of pounds 1 each. The issued capital was more modest, being two shares of pounds 1 each fully paid. Otherwise the only assets, apart from that modest paid-up capital, was freehold land and buildings valued by the directors in 1959 at pounds 20,000. By the time of the December, 1962, balance sheet that valuation had gone up, no doubt perfectly rightly, to pounds 86,202; but the rest of the balance sheet remained remarkably unchanged. It is true that the case in hand in 1958 was pounds 2; but so it was in 1962. But meanwhile the cash at bank had increased from nothing to pounds 13 7s. Those figures, not perhaps very illuminating in themselves, have at any rate convinced me that the only object of Fork in

1958 was to hold this very valuable property, which my Lord, the Master of the Rolls, has described in detail, for the respondents to this appeal. It is necessary, I think, to ask myself, after that examination of the details, who really benefited from getting hold of the freehold. To that in my view there can be only one answer, that it is Littlewoods and not Fork. If that view is right, then the distinction which has been sought to be drawn by Mr. Heyworth Talbot between the facts of the present case and those in the Land Securities Investment Trust Ltd. case does not really exist. Having disposed of that argument, it seems to me there is really nothing left in this case, and we must follow the decision in the Land Securities case, with the result that these appeals must be allowed.

Appeals allowed with costs in Court of Appeal and below.

Decision of special commissioners restored.

Leave to appeal refused.

Solicitors : Jaques and Co., Liverpool; Solicitor, Inland Revenue.