IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ADAMTSAS LTD. (IN VOLUNTARY LIQUIDATION),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(*Case No.* 365/70).

Income tax—Insurance claims—Money received as an ex gratia *payment under insurance policy in respect of stock destroyed by looting—Is a trading receipt.*

Income tax—Trading receipt—Whether a payment is a trading receipt depends on the true nature of its character and not on what the parties call it.

Income tax—Trading receipt—Profits—Date of arising—A receipt may be related back to the year in which it was earned, although not then receivable and there was no expectation that it would be even received.

The applicant company was until the end of the year 1963 a tobacco manufacturing concern. During the intercommunal disturbances in 1963 one of the stores of its factory was broken into by the Turks and looted. As the contents of the store were insured the applicant company applied to the insurance company for compensation but its claim was rejected on the ground that the policies issued were not operative under the particular circumstances and generally on the main ground that the policy did not cover the loss in question. The applicant company went into voluntary liquidation in 1967 and in 1968 an amount of £4000 was paid to the liquidator by the insurance company as an *"ex gratia"* settlement of the applicant company's claim. The Commissioner of Income Tax treated this payment as a trading receipt and liable to income tax. Hence the present recourse.

Counsel for the applicant contended:

(a) That the Commissioner has wrongly treated that amount as a trading receipt and as income liable to tax once the payment was made on an *ex gratia* basis;

(b) that even if it was found that the said payment was an income such income had arisen in 1968 and not in 1963, and it was paid to the company when it was not carrying on any trade or business;

(c) that once the Company went into liquidation, it can only be assessed to income tax if the liquidator continues the Company's trade or if in fact the said income had accrued to the company prior to its liquidation and had not been shown in the Company's accounts.

Counsel for the respondents mainly contended:

(a) That the sum of £4,000 is taxable because it is a trading receipt from the trade which had been carried on by the company before liquidation;

(b) that the said amount was not taxable on the ground that the liquidator was trading, but because of the trade carried on earlier by the said company; and

(c) that because the nature and the character of the payment counts and not what the parties decided to call it *viz.*, that it was an *ex gratia* payment.

Held, (1) it is the true nature of the payment which counts and not really what the parties call it (see *Fitikkides* v. *Republic* (1970) 3 C.L.R. 15); that the whole of the money received under an insurance policy in respect of stock destroyed is a trading receipt (see *Gliksten J., & Son Ltd.* v. *Green,* 14 T.C. 364); that in spite of what has been said that the payment in this case was an *ex gratia* payment, it was a payment or a part payment for part of the goods which were looted; that the payment was effected because the applicant company was doing business with the insurance company; that, therefore, it was a trading receipt, that is to say, a payment by the insurance company as a matter of business; and that, accordingly, the respondent Commissioner rightly treated it as a trading receipt and liable to tax.

(2) *On the question whether the respondent Commissioner rightly treated the said sum of £4,000 as income earned in 1963 and not in 1968 when payment by the insurance company was effected:* That a receipt may be related back to the year in which it was earned, although not then received and there was no expectation that it would be even received (see *Severne (H.M. Inspector of Taxes)* v. *Dadswell,* 35 T.C. 649); that, therefore, the respondent Commissioner rightly treated the said sum of £4,000, which was received by the liquidator as a trading income earned in 1963; and that, accordingly, the recourse must be dismissed.

Application dismissed.

Cases referred to:

Fitikkides v. *Republic* (1970) 3 C.L.R. 15 at pp. 22-23;

Edwards v. *Bairstow* [1956] A.C. (H.L.) 14 at pp. 30-31;

Commissioners of Inland Revenue v. *The Incorporated Council of Law Reporting,* 3 T.C. 105 at p. 113;

Gliksten J. & Son Ltd. v. *Green,* 14 T.C. 364 (H.L.);

R. v. *British Columbia Fir and Cedar Lumber Co. Ltd.* [1932] A.C. 441 at pp. 447-448, 450-451;

Rownson, Drew and Clydesdale Ltd. v. *The Commissioners of Inland Revenue,* 16 T.C. 595 at p. 602;

Isaac Holden & Sons Ltd. v. *Inland Revenue Commissioner.* 12 T.C. 768;

Severne (H.M. Inspector of Taxes) v. *Dadswell,* 35 T.C. 649 at pp. 658-659;

North (H.M. Inspector of Taxes) v. *Dr. W. K. Spencer's Executors,* 36 T.C. 668 at p. 674.

Recourse.

Recourse against the decision of the respondent Commissioner of Income Tax to treat as a trading receipt a sum of £4,000 which was received by the applicant Company as an *ex gratia* payment under an insurance policy in respect of stocks destroyed by looting.

G. Polyviou with *A. Triantafyllides,* for the applicant.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In these proceedings, the applicant company seeks to challenge the assessments imposed upon it under Nos. 2958/AD/69/64B and 2959/AD/69/65B as being *null* and *void* and of no effect whatsoever; and/or alternatively that the decision of the Commissionner of Income Tax to impose additional income tax on the applicant company amounting to £1,327.500 mils for the year of assessment 1964 (1963) and £10,301.150 mils for the year of assessment 1965 (1964) or any other sum is *null* and *void* and of no effect whatsoever.

The facts are these:- The applicant is a private company, Adamtsas Ltd., and its registered office is at Nicosia. The said company until the end of the year 1963 was a tobacco manufacturing concern known as Dianellos and Vergopoullos Limited. Early in 1964 the applicant company sold all its assets except debtors to Ardath Tobacco Co. (Cyprus) Ltd. As it appears, the additional assessments made on the applicant company for the years of assessment 1964 and 1965 (see attached schedule appendix A) and assessment No. 2958/AD/69/64B was raised to include a sum of £4,000 received by the liquidator of the applicant company in the year 1968 from the Sun Insurance Office Limited in respect of loss of stock in the year 1963 during the intercommunal disturbances. On the other hand, assessment No. 2959/AD/69/65B was raised to include a sum of £20,150.000 mils as taxable income of the applicant company for the year of assessment 1965 being balancing addition in respect of the factory building which was sold to Ardath Tobacco Co. (Cyprus) Ltd. early in 1964. The company objected to the additional assessments raised by the Commissioner of Income Tax, but the Commissioner dismissed the company's objections and the present recourse was filed.

Counsel on behalf of the respondent gave notice of opposing the application and the opposition was based on the following grounds of law *viz.*, that the decision com-

plained of was properly and lawfully taken after all relevant facts and circumstances were taken into consideration; and that the respondent's decision to treat as taxable an amount of £4,000 was correctly taken.

It is a fact that before the said company went into voluntary liquidation, and the order was made on the 19th July, 1967, during the intercommunal troubles the company had one of the stores of the factory broken into by the Turks, and looted. The contents of the store were insured by the Sun Insurance Office. When the company applied for compensation, the claim was rejected on the ground that the policies issued were not operative under the particular circumstances, and generally on the main ground that their policy did not cover the loss in question. It appears further that the directors of Adamtsas Ltd. have done nothing more about it until 1968.

As I said earlier, the company, having gone into liquidation, sold all their assets to another company, and the directors as a last effort, raised the question once again with the Insurance Company regarding their earlier claim for compensation. Indeed, Mr. Phanos Ionides, the liquidator, addressed a letter to the Sun Insurance Co. Ltd. dated 15th January, 1968 (*exhibit* 4) in these terms:-

> "I refer to the interview which I had today with your Mr. A. Rossos on the subject of the offer made by you to the above company in full settlement of the claim made against you.
>
> 2. Mr. Rossos has been so kind as to explain to me the facts of the case and we had the opportunity to exchange views on the merits of the claim.
>
> 3. I should perhaps explain that owing to the absence from Cyprus of the principal shareholders of the above company and the fact that it had been intended to let the Company go into voluntary liquidation, it has not been possible to take earlier a final decision in the matter of accepting the offer which you made.
>
> 4. The Company has, since the offer was made, gone into voluntary liquidation and now that the full facts have been brought to my notice I accept the

ex gratia payment of £4,000 offered by you for settlement of the claim, but I shall be grateful if you will be so good as to request on my behalf your Head Office in London to give sympathetic consideration to the two points which I set out hereunder and be pleased to make an additional *ex-gratia* payment.

(a) The offer for an *ex-gratia* payment of £4,000 was made about a year ago and as the money has not yet been paid, you have enjoyed the interest on such money.

(b) In view of the fact that in respect of other similar claims the company received a compensation equal to the three-fourths of the amount for which goods etc. had been insured, an additional *ex-gratia* payment by you will forestall criticisms on the part of some of the shareholders for bad handling by me of the whole affair".

On 17th January, 1968, Mr. A. C. Rossos, the Managing Director of the Sun Insurance Company Ltd., in reply said:-

"Although the offer of our Company for an '*ex gratia*' payment of £4,000.- in full and final settlement of this claim, should be considered, for the reasons amply explained to your goodself, as a most generous one, yet we are forwarding your letter under reference to our Principals in London as requested for their consideration and instructions as necessary.

No doubt we will revert to advise you as soon as we hear from our Head Office".

On 29th January, 1968, Mr. A. C. Rossos wrote to Mr. Ionides and said:-

"Further to our letter of the 17th instant, on the above subject, we would inform you that our Principals have now considered your request for an increase of their offer for an '*ex gratia*' settlement of the claim in question, but, notwithstanding your com-

ments, they do not feel that any additional payment is called for.

You will appreciate that having regard to all the circumstances of the case, as recently explained to you in detail by the writer, including the lack of substantiation of the actual loss our Head Office rightly feel that their offer of £4,000 is a generous one and are therefore not prepared to pay anything more.

We are now arranging to effect the agreed '*ex gratia*' settlement as soon as possible and in the meantime we shall appreciate your consent on the draft text of the relative discharge receipt.

On 2nd February, 1968, Mr. Ionides in reply said:-

"... In the circumstances, I would request you to arrange for early remittance to me of the amount of compensation approved by your principals.

Under ordinary circumstances I would have no objection to signing the draft receipt forwarded to me with your letter but, as the company is in the process of liquidation, I do not think it would be wise on my part, in my capacity as liquidator, to bind anyone by accepting to abide by the contents of para. 2 thereof. I am, however, prepared to sign a receipt as in para. 1 of the draft forwarded to me with para. 2 modified as follows:-

'I hereby undertake to refund to the Sun Insurance Office Ltd. the 50% of any amount which may be recovered by me prior to the completion of the liquidation and before final winding up of the company, in connection with the loss the claim in respect of which has given rise to the above payment, from whatever source, by whatever means and in whatever way any such payment may be made to me including the case of indemnity, *ex gratia* payment, gratuity etc.'."

The said receipt was drafted in these terms:-

"Received from the Sun Insurance Office Ltd., of London, through Federated Agencies Ltd., of Nico-

sia, their General Agents for Cyprus, the sum of £4,000.- (FOUR THOUSAND POUNDS) in full and final settlement and discharge of all our claims arising under Policy No. 19718215, by cheque No. SP 0719 on the Ottoman Bank, Nicosia.

In consequence of the above payment we hereby undertake to refund to the Sun Insurance Office Ltd. the 50% of any amount eventually to be recovered by us prior to the completion of the liquidation and before final winding up of the Company in connection with the above loss from whatever source by whatever means and in whatever way including the case of indemnity *ex gratia* payment, gratuity, etc".

Although the Company's claim was much larger, finally the amount of £4,000 was paid to the liquidator in February, 1968, and the Commissioner was informed of that payment.

It is convenient to state that with regard to the 1965 assessment, a settlement between the parties was reached on 20th September, 1972, in these terms:-

"It has been agreed by both parties to this recourse that for the sake of an out of court settlement of one of the points in dispute *viz.*, the value of the factory building for balancing addition purposes, such value be fixed at £16,000 and that the applicant company should waive its claim that the tax corresponding to the amount of dividend (£5,282) paid by the Company out of capital profits *viz.* £2,248.850 mils be set off against the tax eventually to be determined as payable by the Company in this recourse".

The first question raised therefore, is whether the amount of £4,000 received by the liquidators of the Company as an *ex gratia* payment from the Sun Insurance Co. is taxable or not.

Counsel on behalf of the company contended (a) that the Commissioner has wrongly treated that amount as a trading receipt and as income liable to tax once the payment was made on an *ex gratia* basis; (b) that even if it was found that the said payment was an income such in-

come had arisen in 1968 and not in 1963, and it was paid to the company when it was not carrying on any trade or business; (c) that once the Company went into liquidation, it can only be assessed to income tax if the liquidator continues the Company's trade or if in fact the said income had accrued to the company prior to its liquidation and had not been shown in the Company's accounts.

On the other hand, counsel on behalf of the respondent contended (a) that the sum of £4,000 is taxable because it is a trading receipt from the trade which had been carried on by the company before liquidation; (b) that the said amount was not taxable on the ground that the liquidator was trading, but because of the trade carried on earlier by the said company; and (c) that because the nature and the character of the payment counts and not what the parties decided to call it *viz.*, that it was an *ex gratia* payment.

I think I should state that quite rightly counsel for the applicant company abandoned his argument in support of legal grounds 4 and 5 raising the constitutionality of Law 53/63, and ground 7 challenging the decision of the Commissioner to raise an additional assessment once case No. 146/69 was withdrawn. Finally, this case was concluded on 8th December, 1973.

I find it convenient to state that irrespective of what the parties think of the payment of the sum of £4,000, *viz.*, whether it was an *ex gratia* payment or not, the position is that it is the true nature of the character of the payment which counts, and not really what the parties call it. If authority is needed, I think *Fitikkides* v. *The Republic*, (1970) 3 C.L.R. 15, provides the answer. In that case I was faced with the same problem as to the true nature of the payment and I said at pp. 22-23:-

> "The fact also that a payment is given a particular name by the parties to the arrangement is not conclusive, and the Court will examine the true nature of the payment. Of course, the question in England whether a lump sum receipt constitutes income assessable under Schedule E or capital has arisen in circumstances of great variety. It resolves itself in every case into a question whether or not the sum in

question is truly remuneration or emolument of office, and it is not easy to reconcile the decisions of the Courts or to extract short guiding principles therefrom. It appears that a pre-arranged payment, which the service agreement provides, shall be paid on cessation of office, is treated as deferred emoluments, and so taxable. On the other hand, a payment, whether by agreement or by way of damages, made not by virtue of the service agreement but as consideration for a release from that agreement, is treated as not having the nature of emoluments".

In England, this point on the question whether a transaction was a trading income or not is illustrated in *Edwards* v. *Bairstow,* [1956] A.C. (H.L.) 14 Viscount Simonds said at pp. 30-31.

> "To say that a transaction is or is not an adventure in the nature of trade is to say that it has or has not the characteristics which distinguish such an adventure. But it is a question of law, not of fact, what are those characteristics or in other words what the statutory language means. It appears further that the question is whether or not a trade is or was being carried on, and once that question is answered in the affirmative, there is liability of tax on any resulting profit, irrespective of whether the trading activities were directed to the making of the profit, and irrespective of the purpose to which the profit is applied".

In *Commissioners of Inland Revenue* v. *The Incorporated Council of Law Reporting,* 3 T.C. 105, Lord Coleridge said at p. 113:-

> "I confess I should have thought it capable of argument that they were carrying on a trade, because it is not essential to the carrying on of trade that the people carrying it on should make a profit, nor is it even necessary to the carrying on of trade that the people carrying it on should desire or wish to make a profit. The definition of trade, though it is perfectly true that trade, it may be in ninety-nine cases out of one hundred, does as a matter of fact include the idea of profit, yet the mere word 'trade' does not ne-

cessarily mean profit to be made by the seller to the buyer, or by the buyer from the seller, not at all".

Furthermore, I think I should have added that with regard to insurance claims it is well settled that the whole of the money received under an insurance policy in respect of stock destroyed is a trade receipt. This item is not limited to the amount shown as the value of the stock in the accounts of the business. I believe a leading case on this topic is *Gliksten J. & Son Ltd.* v. *Green,* 14 T.C. 364 (H.L.). In that case a large quantity of the company's stock of timber was destroyed by fire, and the written down value of the destroyed timber stood in the books at £160,824. This figure had been arrived at by the usual method of valuing the stock at cost or market value, whichever was the lower. The timber had been insured and the company had deducted the premiums for tax purposes. The company received from the insurance company £477,838, representing the replacement value of the destroyed timber. Only a small part of this sum was used in replacing timber because the current demand was for timber of a different kind. The company credited £160,824 as a trading receipt on its profit and loss account and took the balance of £477,838 to a reserve in the balance sheet.

Rowlatt, J., having raised the question as to what amount of the money received from the insurance company by the respondents they are to bring into their trading account for the purpose of income tax, said at p. 375:-

> "But in the year in question, owing to the fire, some of the stock which they had at the beginning of the year and which they bought during the year is not accounted for either by the sales or by the stock-in-trade which is left, because it has been burnt.
>
> How do the respondents bring that in? They bring that in as an item 'timber destroyed'. At what price do they bring that in? The timber is gone and the respondents have received money from the insurance companies in respect of the timber destroyed, but they do not bring in the money that they have so received instead of the timber. What they bring in is a figure being the estimated cost price of the timber.

That is simply saying this: that the insurance is treated not as having provided money to take the place of the goods burnt but as having prevented the fire; that is the long and short of it. It seems to me that the respondents must account for this timber that has been destroyed by fire; they have received the money from the insurance company in place of it. I can see no reason why that money should not be brought into the account instead of the timber. It seems to me not difficult. But it is said by Sir John Simon that it is not the business of the respondents to have fires and to collect the money from the insurance company. That may be a very attractive way of stating the respondents' connection, but the fact is that the respondents' business is to buy, hold and sell timber, and it is part of their business to insure timber while they have it, in order that if the timber is destroyed they may have the insurance money instead of the timber and, in my judgment, they must treat that money in the same way as they would have treated the timber, namely, as an item in their trading account".

The Company, having appealed against this decision, the cases came before the Court of Appeal and judgment was given unanimously in favour of the Crown confirming the decision of the Court below. Lord Hanworth, M.R. having quoted from the decision of Mr. Justice Rowlatt, said at p. 379:-

> "Those are the words of Mr. Justice Rowlatt. It appears to me that they are right and, therefore, that the appeal fails".

This decision was followed in *R.* v. *British Columbia Fir and Cedar Lumber Co. Ltd.*, [1932] A.C. 441. In that case, money received by manufacturers under fire policies insuring them in respect of loss of net profits, that would have accrued had there been no interruption of business caused by fire, was held to be income from a business within the meaning of s. 2 of the British Columbia Taxation Act (R, S, B, C, 1924, C. 254).

Lord Blanesburgh, having raised the question whether the loss of net profits receipt is one which should be

brought into calculation for the purpose of arriving in each of the tax years in question at the sum for which the respondents were assessable to income tax, said at pp. 447-448:-

"This insurance receipt therefore was the product of a revenue payment prudently made by the respondents to secure that the gains which might have been expected to accrue to them had there been no fire should not be lost, but should be replaced by a sum equivalent to their estimated amount. . . . .

Finally, the receipt was one of which, as their Lordships think, it can be fairly said that it arose from the business of the respondents. The two English cases of *Commissioners of Inland Revenue* v. *Newcastle Breweries*, (12 Tax Cas. 927) and *J. Gliksten & Son, Ld.* v. *Green* ([1929] A.C. 381) are authorities for this proposition. This receipt was inseparably connected with the ownership and conduct of the respondents' business. Had the respondents not been insured under their main fire policies, these particular use and occupancy policies would not have been available to them. As a result, the respondents have secured for themselves a net receipt involving gain, an unusual mode of deriving gain from the business, it may be agreed, but as Lord Warrington said in similar circumstances in the *Newcastle Breweries* case (12 Tax Cas. 927, 947), not so divorced from the business as to prevent it entering the accounts as a receipt arising therefrom. And it was not a windfall. As observed by Sargant L. J. in *Gliksten's* case ([1928] 2 K.B. 193, 203), it was an ordinary receipt in the sense, not that it would occur every year or regularly at stated intervals, but in the sense that in the case of a business prudently conducted it would ordinarily be received so often as the risk insured against materialized".

Later on his Lordship continued as follows at pp. 450-451:-

"In view of the nature and origin of the receipt, as they have traced these, their Lordships have reached the conclusion that within the meaning even of the interpretation clause this receipt was 'income from a

business', and that in ordinary parlance it was income or gain derived from the business of the respondents which had necessarily to be brought into receipt as such in the profit and loss account of the business referred to in s. 48, sub-s. 3, of the statute...

Their Lordships feel that the true question at issue has not in this statement been really dealt with by the learned judges of the Supreme Court. The real question was whether the insurance moneys in question constituted 'income' of the respondents within the meaning of the Taxation Act, and not whether these moneys were 'profits' of its business. Moneys which are not strictly 'profits' of a business may yet be income of the taxpayer. But even on the question whether the moneys here could properly be described as 'profits' the learned judges do not seem to have referred to the reasoning of the House of Lords in *Gliksten's* case ([1929] A.C. 381) which would appear to be in conflict with their own.

But, however the receipt be described, it is because it is truly 'income' of the respondents that it must be brought into charge in their revenue account for the purpose of arriving in respect of the year of charge at the respondents' net income. Whether the whole or any part of it is finally chargeable depends upon the result of the whole annual expenditure and revenue accounts of which it constitutes one item only".

In *Rownson, Drew and Clydesdale Ltd.* v. *The Commissioners of Inland Revenue,* 16 T.C. 595, once again a part of the company's stock was destroyed by fire and legal advice was to the effect that the goods were not covered by any insurance policy in force at the time. Application was made, however, to the underwriters and a sum of money was received. It was admitted that this sum was a trade receipt. Rowlatt, J. dealing with that question said at p. 602:-

"The first of the points is in regard to some moneys paid in 1919 by underwriters to the appellants in respect of losses by fire and marine casualties in 1918 which happened not to be insured. It was ob-

vious that, by some slip or oversight, they were not insured, but the appellants were obviously doing a large business with underwriters, and the underwriters in fact paid them for those losses. I can very well understand that it might have been said this is mere charity on the part of the underwriters or, at any rate, a gift; I quite understand that argument if it is put forward, but the appellants said: 'We admit this is a trading receipt'. If it is a trading receipt it means it is a payment by underwriters as a matter of business. In respect of what business? What do underwriters pay for? They pay for losses. They may be induced by other considerations to do business and to make payments for settlements or to pay under circumstances when they are not liable to do so, but what they pay for is losses.... I do not think there is any difficulty at all about that".

Directing myself with these judicial pronouncements, and having in mind the long correspondence exchanged between the liquidator and the insurance company, I have reached the conclusion that the insurance company, in spite of what has been said that it was an *ex gratia* payment, it was a payment or a part payment for part of the goods which were looted by the Turks during the intercommunal troubles. There is no doubt that the payment was effected because the company in question was doing business with the said insurance company and, therefore, in my view it is a trading receipt, that is to say, a payment by the insurance as a matter of business. For these reasons, I think that the Commissioner rightly treated it as a trading receipt and liable to tax. I would, therefore, dismiss this contention of counsel for the applicant, because the said sum of £4,000 was the receipt from the trade which had been carried on by the company.

Having reached this conclusion, the next question is whether the Commissioner rightly treated the sum of £4,000 as income earned in 1963 and not in 1968 when payment by the insurance company was effected. There is no doubt that a sum can be added to the profits shown in the profit and loss account of a past period if the title to that sum arose in that period notwithstanding that the precise amount of the sum was not ascertained until a later period: See *Isaac Holden & Sons Ltd.* v. *I.R. Com-*

missioners 12 T.C. 768. See also Simons' Taxes Vol. B, 3rd edn. under the heading "Receipts Related Back" at p. 387-388. The principle that receipts relate back was formulated in *Severne (H.M. Inspector of Taxes)* v. *Dadswell,* 35 T.C. 649. Roxburgh, J. said at pp. 658-659:-

> "Mr. Borneman was constrained by pressure of authority to admit that sometimes a receipt may be related back to the year in which it was earned, although not then received or finalised and although not then receivable under any contract or other legal or equitable title. But this could only be done, in his submission, 'when the amount actually received or agreed (or the formula agreed for quantification) before the discontinuance of the trade is not the final amount (or final formula for quantification of the amount) referable to the item concerned but is only provisional and may fall to be increased by a further amount to which a legal right may subsequently be established'. There is no authority to support this proposition, and the relevance of the subsequent establishment of a legal right I find it hard to discover. Once circumstances arise which allow the reopening of a final account, it seems to me immaterial whether the further payment is gratuitous or not, provided that it relates to work done before the discontinuance of the trade....
>
> Authority in my view establishes the proposition that if it can be said at the moment of discontinuance that the payment for some work already done has not been finally settled, even though there is no legal claim for any more, then if a further payment is made afterwards, even though it is wholly gratuitous, the account can be reopened so as to let in what is analogous to a trade debt at the figure actually received. If, on the other hand, the item is not analogous to a trade debt, or if there has been a final settlement, the account has been finally closed".

In *North (H.M. Inspector of Taxes)* v. *Dr. W. K. Spencer's Executors,* 36 T.C. 668, Vaisey, J., having followed the principle formulated in *Severne* v. *Dadswell* (*supra*) said at p. 674:-

> ". . . . . Mr. Borneman put this proposition, that a

payment received for work done or services rendered is assessable as additional earnings for the years in which the work was done or in which the services were rendered. That, he said, is so, and I think the authority of the case in question justifies this statement. That applies even where there is no title to the additional payment, no expectation that it would ever be received, *i.e.*, where it was *ex gratia* and unexpected . . . . . I think the Commissioners in these two cases came to a wrong conclusion, and that the only course open to me in the circumstances is to allow the appeals".

Having established by judicial precedent that a receipt may be related back to the year in which it was earned, although not then receivable and no expectation that it would be even received, I have decided, though the said decisions are not binding upon me not to depart from them unless I have some serious reasons for doing so *viz.*; if I were not convinced by the reasons given by the learned Justices. I think, therefore, that the Commissioner came to the right conclusion to include the sum of £4,000.- received by the liquidator, in the accounts of the Company, being a trading income and not capital for the reasons I have given in this judgment and because it was received, I repeat, in respect of loss of stock in the year 1963 during the intercommunal disturbances.

I think I ought not to conclude this judgment without saying how much I owed in the preparation of it to both counsel for quoting a number of judicial authorities and for presenting their arguments with such clarity and force. I would dismiss this recourse. But in the circumstances of this case and because of the novelty of the points raised, I am not prepared to make an order for costs.

Recourse dismissed.
No order as to costs.