[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION . . . . . . APPELLANT;

AND

S. HOFFNUNG & COMPANY LIMITED . . RESPONDENT.

ON APPEAL FROM THE HIGH COURT (KNOX C.J.).

H. C. OF A. 1928.

MELBOURNE, *Feb.* 27, 28; *Mar.* 5.

KNOX C.J.

May 22-25, 31; *June* 1, 4; *Oct.* 2, 3; *Nov.* 1.

Isaacs, Higgins and Starke JJ.

War-time Profits—Taxpayer deriving profits from sources within and without Australia—Deductions—Excess profits duty paid in England in respect of Australian profits—Deduction from profits of Australian business of amount paid as excess profits duty in respect of such profits—Assessment—Tentative assessments—Final assessment—Decrease in amount of tax—Objection to assessment—" Alteration or addition " in or to assessment—Effect of—Taxpayer entitled to object to basis of tentative assessments—War-time Profits Tax Assessment Act 1917-1918 (*No.* 33 *of* 1917—*No.* 40 *of* 1918), *secs.* 7 (2) (*c*), 15 (4), 23, 28.

Sec. 15 (4) of the *War-time Profits Tax Assessment Act* 1917-1918 provides that in the computation of war-time profits " deductions shall not be allowed on account of the liability to pay, or the payment of, war-time profits tax, but a deduction shall be allowed for any sum which has been paid in respect of the profits on account of any war-time profits tax or similar tax imposed in any country outside the Commonwealth."

Held, that, in the computation of the amount of tax payable, the taxpayer was entitled to have deducted from the profits of his Australian business for the accounting period the amount paid by way of excess profits duty under the Imperial *Finance Acts* " in respect of such profits," and that the deduction was not limited to such amount as he may have paid under the Imperial *Finance Acts* in respect of his " war-time profits."

Held, also, that assessments made " tentatively " or " subject to revision " or " to be finalized " are not assessments within the meaning of the *War-time Profits Tax Assessment Act*, and do not preclude objections to a complete and final assessment when made.

Judgment of *Knox* C.J. affirmed.

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FEDERAL COMMISSIONER OF TAXATION v. HOFFNUNG & CO. LTD.

Higgins J.

must be lodged within thirty days (sec. 28), I should find it difficult to answer the contention. The result would be that the taxpayer has never yet been under any legal liability for tax for the year in question. But no such contention has been made; and as both parties seem to be willing to treat the document of 26th April 1919 as a valid assessment, and as the construction of sec. 15 (4) must eventually be determined, I see no sufficient reason for refusing to determine it under the circumstances on the basis of the assessment being a real assessment.

STARKE J. This is an appeal from the Chief Justice, which was argued by this Court over nine days, with some occasional assistance from the learned and experienced counsel who appeared for the parties. The evidence was taken and the matter argued before the Chief Justice in two days. This case involves two questions, of no transcendent importance, which are capable of brief statement, and could have been exhaustively argued by the learned counsel in a few hours. One question is the proper construction of sec. 15 (4) of the *War-time Profits Tax Assessment Act*, providing that in the computation of war-time profits " deductions shall not be allowed on account of the liability to pay, or the payment of, war-time profits tax, but a deduction shall be allowed for any sum which has been paid in respect of the profits on account of any war-time profits tax or similar tax imposed in any country outside the Commonwealth." The Chief Justice declared that the taxpayer was " entitled to have deducted from the profits of the Australian business for the accounting period the amount paid by way of excess profits duty " under the Imperial *Finance Acts* " in respect of such profits," whereas the Commissioner insists that the declaration should be in respect of the taxpayer's war-time profits. It appeared to me somewhat doubtful whether it was possible to ascertain the war-time profits under the Australian Act until deductions had been allowed for excess profits duty imposed under the Imperial *Finance Acts*. Sir *Edward Mitchell* appealed, with triumph, to a calculation by the Commissioner set out in the transcript as a solution of the difficulty, but the Court can rightly, I think, relieve taxpayers of such a calculation, because it is based, in my opinion, upon an erroneous construction of sec.