

**IN THE COURT OF REVIEW**

**Appeal No. 1/82**

**BETWEEN : C I G FIJI LIMITED**

**APPELLANT**

**AND : THE COMMISSIONER OF INLAND REVENUE**

**RESPONDENT**

Miss Aurna Prasad counsel for the Appellant

Mr M J Scott counsel for the Respondent

**JUDGMENT**

This is an appeal by C I G Fiji Limited against the assessment to income tax in respect of the price of gas cylinders not returned by customers during 1980. The appellant was formed in 1965 under the name of Industrial Gases Limited and it became C I G Fiji Limited in January 1970. It deals in Industrial gases, and these gases are sold to its customers in cylinders, for which a deposit is charged in addition to the price of the gas, which a deposit is refunded when the cylinder is returned. The appellant and customers both in Fiji and throughout the Pacific, and a higher deposit charge is made to its customers outside Fiji than to those in Fiji. It appears that although deposit charges are made against all overseas or ex-Fiji customers, a deposit is required from only cash customers in Fiji. The Court was told that 16.9% of the appellant's customers paid deposits and in 1980 that figure numbered 336. In 1980 240 cylinders were not returned and the charges were then forfeited, the figure was what the appellant's accountant called the historical cost of the cylinders, although their gross value in a valuation made in 1975 was \$5,919. This is rather curious for although the deposit was refunded at the rate at which it was charged, the deposits are charged out at current replacement cost if the cylinders are lost or not returned. It was conceded that moneys received as deposits on cylinders were paid into the ordinary company accounts although separate receipts were made out for them and the amounts entered in the appellant's books in such a way that they could be identified. The appellant contends that these cylinders represent capital in the form of fixed assets while the Commissioner contends that they are trading stock and thus income.

The appellant says that in as much as there is any profit realised through the loss of its cylinders, that is profit obtained from the realisation of a capital asset. It is not denied

that deduction were claimed and allowed in income tax returns in previous years in respect of these cylinders. It is true that if these cylinders are fixed assets their sale will represent a capital profit. There do, however appear to be major obstacles in the way of the appellant. In the first place if deductions have been allowed in respect of these deposits. I cannot see why those deductions should not be added back if the cylinders are lost or destroyed. Secondly assuming these cylinders to be capital I would have thought they would be of the nature of circulating rather than fixed capital difficult as that distinction may be. They seem to me to be assets of the kind dealt with in the course of the appellant's trade and hence in the nature of stock in trade, and any dealing with them would be in the nature of trading operation and any resulting profit would be a profit of the trade see *Raynolds & Gibson v Crompton* (1950) 2 AER 502, 511. Thirdly two of the South African cases cited by Mr Scott appear very relevant, for the facts approximate very closely to the facts in this appeal. *Brookes Lamos Limited (v South African Commissioner of Inland Revenue)* (1947) 14 SATC 295 were the manufacturers of fruit ) S A T C squashes and other foodstuffs packed in glass containers which always remained the property of the manufacturers. They required customers to make a deposit on containers supplied, subject to an undertaking that if a similar container was returned by the customer the amount of the deposit would be returned. The units received were credited to a separate bottle deposit account, but were not deposited in any trust account and were utilised for the general purposes of the business. It was held that the deposits became the absolute property of the manufacturers and constituted receipts which fell with the item 'gross income' and they were not to be excluded as receipts of a capital nature inasmuch as they were ordinary trade receipts produced by an operation undertaken to earn profits. In *Greases (South Africa) Limited v Commissioner of Inland Revenue* (1951) S A T C 358 the appellant carried on the business of selling grease which was supplied to customers in drums. Prior to 1942 no charge was made for the drums, but for that year the appellant required its customers to return the drums when empty, and also required a deposit to be paid in respect of each drum supplied. It further issued a notice to customers that supplies of grease would not be given unless drums previously issued were returned in good condition. The price fixed in 1942 was \$1, but in 1943 this was increased to \$2. The actual controlled price of the drums was five shillings. The money received by the appellant by way of deposits for drums was shown in its books as held in suspense, but was used but he appellant in its books as held in suspense, but was used by the appellant in its general business and was not placed in any trust account. It was held that as the appellant had received the deposits for its own benefit in that it was entitled to make use of them in its business and required to deposit them to any trust account, the amounts had been rightly included in the appellant's gross income, notwithstanding that it had agreed to pay out to its customers an amount equivalent to their deposits should the drum supplied to them in returned. These two cases were very similar to the appeal under consideration. Mr Scott also referred to *Elson v Prices Tailors Limited* (1963) 1 AER 23: 1 WLR 287. That was a case where deposits were accepted on the sale of suits and although it was the appellant's policy to return the deposit on demand even as late as six years after it had been paid there were some cases where the customer did not return and the deposits were retained. These payments were after a period transferred to a separate account but could be used in the

taxpayers business. It was held that they became the taxpayers property on receipt and fell to be included as income.

Miss Prasad submitted that the payments for these cylinders were fixed capital and referred to the case of Abbotts Albion Greyhounds which produced the company's income were held to be fixed capital, and Wrottesley J made comparison with a dairy herd which produced milk which was sold. If the proceeds of these cylinders were capital at all, which I doubt, then they are circulation capital. In *Ammonia Soda Company Limited v Chamberlain* (1978) 1 CH.266, 286, Swinfen Eady L J compares the two expressions. Fixed capital is "that which a company retains in the shape of assets upon which the subscribed capital has been expended, and which assets either themselves produced income, independent of any further action by the company or being retained by the company are made use of to produce income or gain profits."

Calculating capital is "a portion of the subscribed capital as the company intended to be used by being temporarily parted with and circulated in business, in the form of money, goods or other assets and which, or the proceeds of which are intended to return to the company with an increment and are intended to be used again and again and to always return with some accretion."

It seems to me that since these cylinder deposits could be used in the appellant's business they cannot be regarded as fixed capital, but must be regarded as circulating capital and any excess of receipts over expenditure treated as income. The appeal is dismissed and the Commissioner is entitled to his costs to be taxed in default of agreement.

**K A STUART**  
**COURT OF REVIEW**

**11<sup>th</sup> August 1982**

**Solicitors: William Scott & Co., Legal Adviser  
For Commissioner of Inland Revenue**