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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 41 OF 1982

BEFORE: THE HON. MR. JUSTICE WHITE, JA.
THE HON. MR. JUSTICE ROSS, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A. (AG.)

BETWEEN	THE COMMISSIONER OF INCOME TAX	APPELLANT
AND	CARRERAS GROUP LIMITED	RESPONDENT

Mr. H. Hamilton and Mrs. Claudette Batts for the Appellant
Mrs. A. Hudson-Phillips for the Respondent

November 21, 22, 23, 24 1983;
July 27, 1984

WHITE, J.A.:

I have read the drafts of the judgments of Ross and Campbell, JJ,A. I agree with their reasoning and conclusion on the substantive question which was argued before us. This substantive question was whether the appellant Commissioner of Income Tax, on the basis of the facts known to him, was correct to raise assessments in respect of chargeable income from a trade or business carried on in Jamaica, where, it was argued, a non-resident company was trading through a permanent establishment when it used the facilities of the respondent Carreras Group Limited, a local company, to manufacture, warehouse, package and ship cigarettes to countries in the Caricom area.

In the result, the Court uphold the judgment of the learned Judge of the Revenue Court that the non-resident, given the circumstances of this case, was not trading through a permanent establishment within the meaning of Articles 4 and 5 of the Double Taxation Relief (Taxes on Income) (United Kingdom) Order, 1973.

The appeal is accordingly dismissed. The judgment of the learned judge of the Revenue Court is affirmed. The costs consequently awarded to the respondent, are to be taxed, if not agreed.

ROSS, J.A.

In 1962 Carreras of Jamaica Limited (hereinafter referred to as Carreras No. I) commenced business in Jamaica as a manufacturer of cigarettes under licence from the trade-mark owners. It continued to do so until the end of October, 1973, when there was a re-organization of the business and Carreras No. I changed its name to Carreras Group Limited (i.e., the respondent); it ceased the manufacture of cigarettes at the end of October, 1973, and became a holding company which held all the shares in a new company, Carreras of Jamaica Limited (hereinafter referred to as Carreras No. 2). The manufacture of cigarettes was taken over by Carreras No. 2 as from the beginning of November, 1973.

Sometime in 1975 the Commissioner of Income Tax the appellant, undertook an audit of the cigarette manufacturing operation at Twickenham Park in Spanish Town, St. Catherine. As a consequence of that audit and based on information available to the appellant from the records of the company, the appellant took the view: (1) that royalties were being credited to the account of the United Kingdom Company Carreras Rothmans Limited, and (2) that a sum described as "net proceeds" derived from the sale of cigarettes in the Eastern Caribbean was also being credited to the account of Carreras Rothmans Limited.

On that basis, the appellant concluded that Carreras Rothmans Limited was carrying on a trade through a permanent establishment in Jamaica and consequently, that the preferential rates of tax provided for in the Jamaica/United Kingdom Double Tax Treaty (which is to be found in the Jamaica Gazette Supplement 1973 No. 140) no longer applied to it, and he assessed that company through the respondent on the combined profits consisting of the royalties and the "net proceeds" at the standard rate of 45 percent.

Objections were filed in accordance with the provisions of the Income Tax Act and there were meetings and correspondence between the parties. At some stage the company pointed out to the appellant that the so-called "net proceeds" which had been credited to Carreras Rothmans were in fact destined for Tobacco Exporters International (hereinafter referred to as T.E.I.) and requested that the assessments be amended on the basis that the profits did not belong to Carreras Rothmans but to T.E.I., and that in any event T.E.I., was not trading through a permanent establishment and so was protected by the Jamaican/United Kingdom Double Tax Treaty.

The appellant then wrote to the respondent on January 13, 1977, requesting it to furnish information to substantiate its claim that the net proceeds credited to the account of Carreras Rothmans were properly attributable to T.E.I. The respondent through its chief executive officer, Mr. Saulter, replied within 10 days promising to supply the information and stating that some of it had to be obtained from the United Kingdom. The respondent failed to supply the information and in October, 1979, the appellant issued a notice of decision confirming the assessments on the basis that royalties and "net proceeds" were all attributable to a trade being carried on in Jamaica through a permanent establishment by a non-resident.

The respondent appealed against that decision and that appeal was heard in the Revenue Court. At the hearing of that appeal several witnesses were called by the respondent and they testified that:

(1) Carreras No. I had changed its name to Carreras Group Limited;

(2) Carreras Group Limited had ceased manufacturing cigarettes from October 31, 1973;

(3) Carreras No. 2 commenced the manufacture of cigarettes on November 1, 1973, until some time in 1977 when there was a merger between Carreras No. 2 and B & J.B. Machado under the new name of Cigarette Company of Jamaica Limited.

(4) T.E.I. was a subsidiary of Rothmans International and so was Carreras Rothmans Limited;

(5) Carreras Rothmans was, under a licensing agreement, entitled to the use of certain trade marks and to the payment of royalties for the same;

(6) Carreras Group Limited was partly owned by Carreras Rothmans but the latter was not the majority shareholder as it held only 48 percent of the shares and the other 52 percent remained in Jamaican hands;

(7) T.E.I. had a marketing arrangement in the Eastern Caribbean for the marketing of certain brands of cigarettes; T.E.I. from time to time secured purchasers in the Eastern Caribbean and to meet the demands of its customers it entered into an arrangement with Carreras No. 1 & 2 whereby cigarettes would be manufactured in Jamaica to the order of T.E.I., then shipped to the Eastern Caribbean and the proceeds of sale would be remitted to Carreras No. 2 who would deduct therefrom its manufacturing cost, based partly on a fixed sum of £10,000 and partly on the overheads involved in the manufacture of cigarettes for T.E.I. and designed to fluctuate with the volume of cigarettes produced. The balance - the "net proceeds" - was then credited to Carreras Rothmans Limited for T.E.I., by the Jamaican company;

(8) This procedure was an accounting convenience whereby all payments to any of the U.K. companies were funnelled through the Carreras Rothmans account and payment to a local company through Carreras Group Limited. Further, the local companies were not obliged to fill orders for T.E.I.; the arrangement between the local company and T.E.I. was a common practice of international tobacco traders of ordering cigarettes from a manufacturing source closest to the target market. This concept was known as "sourcing";

(9) The method used in filing orders was that:

(a) cigarettes were manufactured to the order of T.E.I., and were separately and specially packaged,

(b) the local company never kept in its warehouse in Jamaica a stock from which the orders of T.E.I., were filled,

(c) each order was manufactured and then passed through the Government excise warehouse for export to the Eastern Caribbean; the cigarettes remained the property of the local company until it was put on board the ship for the Eastern Caribbean;

(d) the local company was not obliged to supply the cigarettes although it did in fact supply them.

(10) T.E.I., did not maintain in Jamaica a factory, office, branch, workshop, place of management - this evidence was led in order to show that T.E.I. had no fixed place of business in Jamaica.

It is to be noted that the appellant at the hearing in the Revenue Court decided not to lead any evidence, and consequently the only evidence before the learned judge was that led in support of the respondent's case. Although the appellant did not call evidence, he filed a statement of the case in which the principal facts relevant to the appeal were set out for the information of the learned judge, and most of those facts were admitted by the other side.

At the end of the hearing the learned judge of the Revenue Court gave an oral judgment allowing the appeal of Carreras Group Limited and it is from this judgment that the Commissioner of Income Tax has appealed to this Court.

His grounds of appeal are:

"(1) That the learned trial judge erred and/or misdirected himself in law in holding that the non-resident was not trading through a permanent establishment within the meaning of Articles 4 and 5 of the Double Taxation Relief (Taxes or Income) (United Kingdom) Order 1972.

(2) That the learned trial judge erred and/or misdirected himself in law in rejecting the definition of permanent establishment provided in the commentary to the Organization for Economic Co-operation and Development model convention on which the the Jamaica/United Kingdom Treaty is based and holding that a permanent establishment required that some representative or employee of the non-resident be present in the Island or alternatively that the physical facilities be owned or controlled by it.

(3) That the learned trial judge erred and/or misdirected himself in law in holding that the non-resident properly assessable was Tobacco Exporters International and not Carreras Rothmans Limited."

Mr. Hamilton for the appellant first dealt with ground 3. The non-resident company referred to in the books of Carreras No. 2 as disclosed by the audit, was Carreras Rothmans, he submitted, and this company was using the facilities of Carreras No. 2 to manufacture, package, warehouse and ship cigarettes to customers in the Caricom area. This was being done on a basis where the non-resident company would pay all production costs and a percentage of overhead costs. As the local company had no license to export cigarettes the export business was entirely the trade of the non-resident company. In these circumstances, he urged that the non-resident company which was involved in trading and, assessable, was Carreras Rothmans and not Tobacco Exporters International (T.E.I.).

The learned trial judge noted that the oral evidence adduced before him was not available to the Commissioner of Income Tax when he made his assessment; having heard the witnesses called he found them to be highly qualified or very experienced and they impressed him as witnesses of truth and reliability; they had not been shaken in any material respect by cross-examination. The

learned judge therefore accepted the evidence of the witnesses in regard to the nature of the arrangements between T.E.I., and the local companies and on the question as to the existence in Jamaica of a permanent establishment for T.E.I.

There was clear oral and documentary evidence adduced as to the functions of T.E.I. in the Eastern Caribbean and the relationship between the local companies and T.E.I. and it was open to the learned judge to find, as he did, that the non-resident company involved in the distribution and sale of cigarettes in the Eastern Caribbean was T.E.I. and not Carreras Rothmans. This being the case, the non-resident properly assessable would be T.E.I. and not Carreras Rothmans.

Ground 3 therefore fails and we turn to grounds 1 and 2 which may conveniently be taken together.

As the learned judge said, the crucial question is whether or not an organization known as Tobacco Exporters International (T.E.I.), was carrying on a trade in Jamaica through a permanent establishment.

On the first ground of appeal the main point made by Mr. Hamilton for the appellant was that the non-resident company was trading within the Island and using the appellant's factory for that purpose. He referred to section 5 (3), Income Tax Act which states:

> "(3) For the purposes of this Act a trade, business, employment, profession or vocation shall not be treated as being exercised otherwise than within the Island solely by reason that contracts made in the course thereof are made outside the Island, if they are made as a result of or in connection with the activities pursued within the Island."

In support of his submissions he cited the case of the Firestone Tyre & Rubber Co., Ltd., v. Lewellin (Inspector of Taxes) 37 T.C. 111.

In this case the trade mark of Firestone tyres was owned by A a foreign company with a world-wide organization. The tyres were manufactured and sold in the United Kingdom by A's wholly owned resident subsidiary B, which was assessed to Income Tax on that business, the percentage on exports hereinafter mentioned being brought into the receipts. A made agreements with distributors in other countries specifying the terms on which Firestone products would be supplied and binding them to keep on hand reasonable stocks and use their best endeavours to sell those products. These distributors were given a list of manufacturers, including B, who could fulfil orders; B was given a list of the distributors and was under contract to A to fulfil orders obtained abroad by A. In practice B received orders direct from the distributors, made delivery at a port in the United Kingdom and received payment, which was credited to A in the books of B after deducting costs plus 5 percent.

The profits of the export trade were assessed to Income Tax under case 1 of Schedule D for the years 1940-41 to 1944-45 on the alternative basis that it was carried on either by B on its own behalf or by A in the United Kingdom through the agency of B. On appeal to the Special Commissioners B contended that the trade of selling tyres to A's customers abroad was not carried on by B on its own behalf and not exercised by A in the United Kingdom or through B's agency, but that the fulfilment of each order by B involved a sale to A with delivery to A's orders. The Commissioners found that B held goods of its own at A's disposal and sold them on A's behalf to customers approved, and on terms imposed, by A. They concluded that A was through the agency of B exercising a trade in the United Kingdom, where the orders were

received and fulfilled, the goods manufactured and payment received. Both parties demanded a case but in the High Court the Crown abandoned the assessments on B as principal.

It was held:

> "(1) that a trade was exercised in the United Kingdom of selling to distributors abroad under contracts made in the United Kingdom tyres manufactured therein and delivered therein to the purchasers against payments therein of the contract price;
>
> (2) that the Commissioners were fully entitled to conclude that the trade was exercised by A through the agency of B."

The above case can, however, be distinguished from the instant case as:

> (1) B was a wholly owned resident subsidiary of A whereas there was no direct relationship between T.E.I. and the local companies;
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> (2) B was under contract to A to supply orders obtained abroad by A, whereas the local companies were not obliged to supply the orders;
>
> (3) B held goods of its own at A's disposal and sold them on A's behalf to customers approved and on terms imposed by A whereas the local company never kept in its warehouse a stock from which Orders of T.E.I. were filled;
>
> (4) In practice, B received orders direct from the distributors, whereas the orders supplied by Carreras No. 2 were only received from T.E.I.

Having regard to these distinctions I hold the view that the Firestone case is clearly distinguishable from the instant case and that T.E.I., was not exercising a trade in Jamaica through the agency of Carreras Group or Carreras (No. 2).

We next have to consider the further question of whether T.E.I. was trading in Jamaica through a permanent establishment.

The unchallenged evidence was that the cigarettes were manufactured, warehoused and shipped to customers in the Eastern Caribbean by the local company on the instructions of T.E.I.; payment would be made to the local company and the proceeds after deduction of production costs, etc., would be paid into an account in the appellant's books.

Mr. Hamilton submitted that the carrying on of T.E.I.'s export business through the use of the appellant's factory and warehouse satisfied the term "place of business" in the definition of "permanent establishment".

In the Jamaica/United Kingdom Treaty on Double Taxation (P.R.R. No. 140 (31. 12. 73) Notice 479) Article 5 paragraph 1 states:

> "The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Jamaican tax unless the enterprise carries on a trade or business in Jamaica through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Jamaica, but only on so much of them as is attributable to that permanent establishment."

The term "permanent establishment" is defined in Article 4 ibidem:

> "1. For the purposes of this agreement the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
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> 2. The term "permanent establishment" shall include especially:
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> (a) a place of management
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> (b) a branch
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> (c) an office
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> (d) a factory
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> (e) a workshop
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> (f) premises used as a sales outlet
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> (g) a warehouse in relation to a person providing storage facilities for others ....."

Mr. Hamilton submitted that T.E.I. carried on its export business through the factory and warehouse of the appellant who was T.E.I.'s agent in Jamaica and that this was a case where article 4, paragraph 5 was applicable. The paragraph states:

> "A person acting in one of the territories on behalf of an enterprise of the other territory other than an agent of an independent status to whom paragraph (7) applies - shall be deemed to be a permanent establishment of the enterprise in the first mentioned territory -
>
> (a) if he had and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
>
> (b) if he maintains in that first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders or makes deliveries on behalf of the enterprise."

It was further submitted on behalf of the appellant Commissioner that on the evidence T.E.I. was carrying on its export business through the local companies' factories and warehouse business, and the use of its personnel, whom they instructed in the conduct of their business, and that these arrangements constitute a permanent establishment within the meaning of Article 4 of the Double Taxation Treaty.

Reference was also made to the Commentary on the Treaty by Edwardes-Ker which helps to explain the Treaty, paragraph 34 states:

> "34: Under paragraph 5, only those persons who meet the specific conditions, may create a permanent establishment; all other persons are excluded. It should be borne in mind, however, that paragraph 5 simply provides an alternative test of whether an enterprise has a permanent establishment in a State. If it can be shown that the enterprise has a permanent establishment within the meaning of paragraphs 1 and 2 (subject to the provisions of paragraph 4) it is not necessary to show that the person in charge is one who would fall under paragraph 5."

There is no evidence that the appellant or Carreras No. 2 was acting in Jamaica on behalf of T.E.I., nor was there evidence that the local companies either exercised authority to conclude contracts in the name of the enterprise or maintained a stock of cigarettes or other goods belonging to the enterprise from which orders were habitually filled. The evidence accepted by the learned judge was quite to the contrary. Ivor Stephenson, Secretary of T.E.I., testified:

> "When T.E.I. received an order from a customer it would decide whether it would be better to ship the goods from Jamaica or from the United Kingdom or elsewhere. If Jamaica were the best source, then an order is placed in Jamaica for production of that quantity required. The goods are then shipped from Jamaica and payment received from customers either in Jamaica or the U.K.; if payment is received in Jamaica the proceeds are credited to T.E.I., through the inter-company accounts with Carreras Rothmans ...."

On this aspect of the case the learned judge found:

> "The uncontradicted evidence is that neither T.E.I., nor its holding company has any controlling interest in the local company, and all arrangements are at arms length. The system for the manufacture of cigarettes locally including the arrangement for shipping and payment, do not in my judgment render any of the Jamaican companies dependent on T.E.I. any more than in the general sense of any business being dependent on its customers. As one of the witnesses said, the appellant is not obliged to execute these arrangements - although it did in fact do so on a regular basis because it was (1) a good business and (2) part of the practice of 'sourcing' utilised by international Tobacco traders."

There was no direct relationship between Carreras Group and T.E.I., nor was there any direct relationship between T.E.I. and either Carreras (No. 2) or Carreras (No. 1). The learned judge found that the arrangements were at arm's length and there is no basis on the evidence for the allegation that the factory and/or warehouse was the permanent establishment of T.E.I., within the meaning of the Double Taxation Treaty referred to above.

It seems to me that the weakness of the submissions made on behalf of the appellant lies in the allegation that T.E.I., carried on its export business through the use of the local company's factory and warehouse, and that in consequence the factory and/or warehouse constituted a permanent establishment in Jamaica from which T.E.I. operated through its agent, the local companies. If it is borne in mind that the uncontradicted evidence was that T.E.I., would place an order with the local companies for the production of the required quantity of cigarettes which the local companies would produce and ship to the designated customer, such a transaction would be nothing more than an ordinary purchase and sale between two parties and it could not be a basis for saying that T.E.I. was using the local company's factory and warehouse for its export business.

It was also submitted that T.E.I. used the personnel of the local companies and instructed them in the conduct of its business, and that these arrangements constituted a permanent establishment within the meaning of section 4 of the Double Taxation Treaty. But again we note that the order is to the company, and there is no evidence of instructions being given by T.E.I., or its officers, to particular employees of the local companies; every company must act through its personnel and the evidence suggests that in the manufacture and shipping of the cigarettes ordered by T.E.I., the personnel of the local companies were acting only on the instructions of their employers, the local companies.

The submission on behalf of the appellant as to the use by T.E.I. of the local company's factory and warehouse to provide a permanent establishment in the circumstances stated appears to me to be completely contrary to the evidence and I find no merit in it.

In my view, the appeal fails on each of the grounds of appeal referred to above for the reasons set out, the judgment of the learned judge of the Revenue Court is accordingly affirmed and the respondent is to have his costs of appeal, agreed or taxed.

CAMPBELL, J.A. (AG.):

This is an appeal by the Commissioner of Income Tax from the order of Marsh, J., in the Revenue Court on June 9, 1982 allowing the appeal of Carreras Group Limited against assessments raised on it as agent of Carreras Rothmans Limited a non-resident company in respect of chargeable income from trade or business allegedly carried on in Jamaica by the non-resident company. The assessments are in respect of the years of assessment 1973 and 1974.

The historical evolution of Carreras Group Limited and of certain non-resident companies disclosed that there was, contrary to the learned judge's finding, an interlocking and/or associated relationship between them. Further, that it was Carreras Rothmans Limited who was properly assessable to tax, if at all, in respect of trading operations in Jamaica.

Carreras Limited was incorporated in the United Kingdom on June 5, 1903, and carried on the business of manufacturing and distributing cigarettes, exploiting for this purpose its own trade mark "Craven A" and other trade marks including "Dunhill" and "Rothmans" under agreements with their respective owners. Between 1950 - 1955, it acquired the entire share holding of John Sinclair Limited another cigarette manufacturing company and thereafter kept the latter company dormant until September 7, 1972, when it was revitalised and renamed Carreras Rothmans Limited.

On September 7, 1972, Carreras Limited, acting as the vehicle for a merger of four European Tobacco manufacturing interests, changed its name to Rothmans International Limited. It also changed its objects to that of a financial holding company and in consequence of the aforesaid change in objects, it conferred on Carreras Rothmans Limited, mentioned above, the authority and power as its agent to conduct its existing trading operations and manage and superintend its pre-merger interests. An extract from the minutes of a meeting of the Directors of Carreras Rothmans Limited held on September 7, 1972, makes clear the scope of the agency of Carreras Rothmans Limited. It reads thus:

"Minutes 6

Rothmans International Limited

"The Board noted the terms of a Resolution passed earlier this day by the Directors of the Parent Company whereby from the date of completion of the merger Agreement under which the Parent Company would acquire the European and related tobacco interests of Rupert Foundation Societe Anonyme of Luxembourg the existing trading operations of the parent company should be conducted and its pre-merger interests (as from time to time subsisting) super-intended and managed on its behalf by Carreras Rothmans Limited, all expenditure being defrayed or reimbursed by and all income accruing for the benefit of the Parent Company to the intent that all trading operations should legally continue to be carried on by or on behalf of the Parent Company. In the exercise of its function the Board was empowered to authorise any existing fellow subsidiary to carry on or provide such services to the Parent Company as the Board may from time to time think fit.

"The Board resolved that the terms of this resolution be carried into effect and that until otherwise resolved all standing resolutions of the Board of the Parent Company should mutatis mutandis apply to Carreras Rothmans Limited. It was further resolved that the existing functions of fellow subsidiaries in connection with the the trading operations of the Parent Company should likewise be continued until further resolved."

Prior to the merger, and to facilitate it, a new company namely Tobacco Exporters International Limited (hereafter called T.E.I. Ltd.) had been incorporated in the United Kingdom on March 31, 1971. It subsequently became a wholly owned subsidiary of Rothmans International Limited and on the evidence of Mr. Ivor Stephenson the secretary of T.E.I. Ltd., it was incorporated to take over the whole of the overseas business of the new group. It did not however go into operation until 1973 by which time Carreras Rothmans Limited had been mandated by Rothmans International Limited, as disclosed in the minutes recited above, to conduct the latter's existing trading

operations including a power to authorise a fellow subsidiary to continue to do so.

From the above, it seems clear and incontrovertible that firstly, inasmuch as T.E.I. Ltd. was a wholly owned subsidiary of Rothmans International Limited, the latter had the authority to control and direct the former's business activities. Secondly, the mandate given to Carreras Rothmans Limited by Rothmans International Limited would cover the trading operations formerly carried on by the latter through its wholly owned subsidiary T.E.I. Ltd. Accordingly, the only authorised person competent to conduct business activities of the overseas group in Jamaica would be Carreras Rothmans Limited, the more favoured of the two wholly owned subsidiaries of Rothmans International Limited.

Turning to the local scene, Carreras of Jamaica Limited (hereinafter called Carreras No. 1) was incorporated in Jamaica on April 4, 1962. It was originally a wholly owned subsidiary of Carreras Limited and thus after September 6, 1972, would have been, like T.E.I. Ltd., and Carreras Rothmans Limited, a wholly owned subsidiary of Rothmans International Limited. However, between 1962 and 1964, 52 percent of the shareholding of Carreras of Jamaica Limited was sold to the Jamaican public. This resulted in Rothmans International Limited being relegated to a minority shareholder. It however remained a substantial minority shareholder. On October 31, 1973, Carreras No. 1 became Carreras Group Limited a holding company. It secured simultaneously, the incorporation as a wholly owned subsidiary, a new company of like name as the former company. This new company incorporated on October 31, 1973, is referred to hereafter as Carreras No. 2. Inasmuch as Carreras No. 2 is a wholly owned subsidiary of Carreras Group Limited, then Rothmans International Limited would have a substantial minority interest in it, namely, 48 percent shareholding derivately through Carreras Group Limited, and under the resolution of Rothmans International Limited mandating Carreras Rothmans Limited to conduct its trading operations and superintend and manage its pre-merger interests, both Carreras Group Limited, and or Carreras No. 2, would be legally authorised to

deal with Carreras Rothmans Limited in all trading matters of Rothmans International Limited including the trading operations of Rothmans International Limited carried on through T.E.I. Ltd., its wholly owned subsidiary.

This conclusion though vital in determining together with the other facts, who would be properly assessable to tax in Jamaica, did not however affect in any material way the determination of the really fundamental issue which was before the learned judge arising out of the manufacture in Jamaica by Carreras No. 1 and No. 2 of cigarettes on the instruction of an overseas non-resident company, be it Carreras Rothmans Limited or T.E.I. Ltd., the despatch of the cigarettes overseas to customers of the said overseas company, and the receipt in Jamaica on behalf of the latter of the proceeds of sale of the cigarettes from the customers. This issue was posed by Mrs. Hudson-Phillips and acquiesced in by Mr. Hamilton as hereunder, namely:

> (1) Whether either Carreras Rothmans Limited or T.E.I. had, during the relevant years of Assessment, a Permanent Establishment in Jamaica with which the net proceeds from the trading transaction were effectively connected or attributable. In other words, was either Carreras Rothmans Limited or T.E.I. trading in Jamaica and if it was, was it doing so from a permanent establishment in the country?

The learned judge made the following findings of fact:

> "(i) T.E.I. Ltd. was a subsidiary of Rothmans International Limited and so was Carreras Rothmans Limited.
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> (ii) Carreras Rothmans Limited was, under a licencing agreement, entitled to the use of certain trade marks and to the payment of royalties for the same;
>
> (iii) Carreras Group Limited was partly owned by Carreras Rothmans Limited (sic) (should be Rothmans International Limited) but the latter was not the majority shareholder as it held only 48% of the shares whereas the other 52% remained in Jamaican hands;

"(iv) T.E.I. Ltd. had a marketing arrangement in the Eastern Caribbean for the marketing of certain brands of cigarettes. The organization from time to time secured purchasers in the Eastern Caribbean and to supply such purchasers, it entered into an arrangement with Carreras No. 1 & 2 whereby cigarettes would be manufactured in Jamaica to the order of T.E.I. Ltd. then shipped to the Eastern Caribbean and in due course the proceeds of the sale would be remitted to Carreras No. 2 who would deduct therefrom its manufacturing cost based partly on a minimum sum of ≠10,000 representing a share of the overheads attributable to the manufacturing of the cigarettes for T.E.I. Ltd., which fluctuated upwards dependent on the volume, and partly on the variable cost of materials, wages and other direct manufacturing costs. The balance of the net proceeds - was then credited to Carreras Rothmans Limited for T.E.I. Ltd., by the Jamaican company.

(v) The crediting of the balance of the net proceeds to Carreras Rothmans Limited was an accounting convenience whereby all payments to any of the U.K. companies were funnelled through Carreras Rothmans Limited's account and payments to Jamaica through Carreras Group Limited.

(vi) The local companies were not obliged to fill orders for T.E.I. Ltd., by supplying the cigarettes, even though they did in fact supply the same.

(vii) Throughout the entire operation, cigarettes remained the property of the local company until put on board the ship for the Eastern Caribbean.

(viii) The uncontradicted evidence is that neither T.E.I. Ltd. nor its holding company has any controlling interest in the local company and all arrangements are at arms length."

The above findings except for the finding that it was T.E.I. Ltd. and not Carreras Rothmans Limited who dealt with the local companies and the finding that the arrangements were at arms length are fully supported by the evidence.

The learned judge having concluded that it was T.E.I. Ltd. and not Carreras Rothmans Limited who was involved in the arrangements for supplying cigarettes to customers in the Eastern Caribbean, proceeded to consider whether these activities of T.E.I. Ltd., constituted trading in Jamaica by it through a permanent establishment within the meaning of Articles 4 and 5 of the Double Taxation Treaty with the United Kingdom scheduled to the Double Taxation Relief (Taxes on Income)

(United Kingdom) Order, 1973. Article 4 relates to the concept of permanent establishment whereas Article 5 deals with exemption from liability to tax. It states thus:

> "Art. 5 (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Jamaican tax unless the enterprise carries on a trade or business in Jamaica through a permanent establishment therein. If it carries on a trade or business as aforesaid, tax maybe imposed on those profits by Jamaica, but only so much of them as is attributable to that permanent establishment."

The learned judge concluded that T.E.I. Ltd. was not trading in Jamaica from a permanent establishment within the aforesaid Treaty because:

(i) None of the local companies on the evidence could be deemed a permanent establishment within the meaning of Article 4, paragraph 5 of the Treaty which reads thus:

> "5. A person acting in one of the territories on behalf of an enterprise of the other territory other than an agent of an independent status to whom paragraph (7) applies shall be deemed to be a permanent establishment of the enterprise in the first mentioned territory:
>
> (a) if he has and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
>
> (b) if he maintains in that first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders or makes deliveries on behalf of the enterprise."

(ii) T.E.I. Ltd. did not conduct any business in Jamaica from a permanent establishment within the meaning of Article 4, paragraphs 1 and 2 of the Treaty which reads thus:

> "Article 4 (1) - For the purposes of this agreement the term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
>
> (2) The term 'permanent establishment' shall include especially:

"(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory

(e) a workshop;

(f) premises used as a sales outlet;

(g) a warehouse, in relation to a person providing storage facilities for others;

(h) a mine, quarry or other place of extraction of natural resources;

(i) a building site or construction or assembly project which exists for more than six months."

The learned judge accordingly allowed the appeal of Carreras Group Limited against the assessments. From this decision the appellant appeals on three grounds, namely:

"(1) That the learned trial judge erred and/or misdirected himself in law in holding that the non-resident was not trading through a permanent establishment within the meaning of Articles 4 and 5 of the Double Taxation Relief (Taxes on Income) (United Kingdom) Order 1973.

(2) That the learned trial judge erred and/or misdirected himself in law in rejecting the definition of permanent establishment provided in the commentary to the Organization for Economic Co-operation and Development model convention on which the Jamaica/United Kingdom Treaty is based and holding that a permanent establishment required that some representative or employee of the non-resident be present in the island or alternatively that the physical facilities be owned or controlled by it.

(3) That the learned trial judge erred and/or misdirected himself in law in holding that the non-resident properly assessable was Tobacco Exporters International and not Carreras Rothmans Limited."

Mr. Hamilton in his submissions on grounds 1 and 2 repeated substantially the submission which he made before the learned judge. These were that the undisputed evidence clearly disclosed that a non-resident, be it Carreras Rothmans Limited or T.E.I. Ltd., had secured for itself the manufacture in Jamaica of cigarettes especially packed according to its instructions. It had secured the processing of the packaged cigarettes through the local company's warehouse for export. It had secured the payment of the freight and the shipment by the local company of the cigarettes to its overseas customers. It had

secured payments in Jamaica for the cigarettes which payments were credited to its account in the books of the local company. On these facts an export trade was being carried on in Jamaica by some person. Since the local company was not authorised to indulge in export trade on its own account the aforesaid export trade must have been carried on by the non-resident. The aforesaid non-resident carried on its export trade from a permanent establishment in Jamaica because it used the facilities, namely, the factory and personnel of the local company, for which the latter was compensated by way of reimbursement of the entirety of its direct production costs plus an agreed variable sum varying with the volume of production towards overhead expenses.

Mr. Hamilton as he did before the learned judge, relied on Firestone Tyre & Rubber Co. Ltd. (as agents for Firestone Tire & Rubber Co. of Akron Ohio, U.S.A.) v. Lewellin (H. M. Inspector of Taxes) 37 T.C. 111, (H.L.), (1957) 1 W.L.R. 464 as authority that on substantially similar facts a trade was held to have been carried on in the United Kingdom by a non-resident company.

In the instant case Mr. Hamilton submitted that the learned judge's conclusion that T.E.I. Ltd. was not trading in Jamaica from a permanent establishment as defined and elaborated in Article 4 of the Treaty, was occasioned by his failure to subject to detailed analysis the arrangements for the manufacture of cigarettes between Carreras Overseas Division and the local company, evidence of which was tendered by the respondent itself as Exhibit 17. This arrangement says Mr. Hamilton, contradicted the mere ipse dixit of the respondent's witnesses on the absence of any obligation on the part of the local company to implement the orders of the overseas group. The non-resident company under the arrangement used the facilities and personnel of the local company who were given instructions both as to the manufacture, the packaging and the customers to whom the cigarettes were to be exported. The obligation of the personnel of the local company to comply with instructions from the overseas enterprise made them personnel dependent on the overseas enterprise and the learned judge's concept of dependent personnel was accordingly erroneous.

For the respondent, Mrs. Hudson-Phillips in substance relied on

the findings of the learned judge except for the finding in connection with the local company which kept the inter-company account. In addition, she submitted that in so far as the appellant was resting his case on the use by T.E.I. Ltd. of the local company's facilities to satisfy the requirement that it had in Jamaica a permanent establishment, he could not succeed because even if the physical facility, namely, the factory was used, the operations there were not carried on by any personnel of T.E.I. Ltd. This, she says, is one of the cumulative pre-requisites for establishing that there was a "fixed place of business" as stated in the commentary on "permanent establishment" contained in the work intituled "The International Tax Treaties Service" edited by one Michael Edwardes-Ker on which the appellant himself relied. She submitted that to satisfy the requirement of trading from a permanent establishment by an overseas enterprise it is envisaged that there must be some physical presence of the overseas enterprise, "some element of inter-facing between resident and non-resident personnel" using the words of the learned judge.

Mrs. Hudson-Phillips further submitted that the personnel envisaged in the concept of fixed place of business must be totally dependent on the non-resident enterprise. This she says is the irresistible conclusion from the interpretation of paragraphs 2 and 9 of the abovementioned commentary when read together.

A further submission of Mrs. Hudson-Phillips was that since in any case T.E.I. Ltd. was, on the evidence, not shown to be a manufacturer, but only a distributor, it could not be said to be carrying on any part of its business activities here through the use of manufacturing facilities i.e., factory and or personnel of the local company.

The submission by Mrs. Hudson-Phillips that "personnel" in terms of paragraphs 2 and 9 of the commentary meant personnel totally dependent on the non-resident enterprise, as well as her submission that T.E.I. Ltd. not being a manufacturer could not, in any case, and for that reason be carrying on a trade in Jamaica were not canvassed before the learned judge, they could not however, in my

view have advanced her case as they are totally without merit.

In regard to the other submissions the judge proceeded to consider them on the assumption without any specific finding, that the facts as found by him constituted trading in Jamaica by T.E.I. Ltd.

The second sentence of his oral judgment ran thus:

> "The crucial question is whether or not an organization known as Tobacco Exporters International (hereinafter called T.E.I.) was carrying on a trade in Jamaica through a permanent establishment."

The Firestone Tyre & Rubber Co. case, supra, on which Mr. Hamilton relied as establishing that in circumstances similar to the present case a non-resident company was held to have been carrying on business in the United Kingdom using the facilities and personnel of a resident company, do not in my view assist him, though it is of assistance in isolating and distinguishing the issue in this case from the issue in that case.

The facts in that case summarised in the judgment of Harman, J. in the High Court are as hereunder:

> "The Firestone Tire & Company, a corporation established in the state of Maine in the United States of America and having its headquarters at Akron in the State of Ohio (hereinafter called Akron) was a large organization which had a worldwide market for its tyres which were sold under the brand name of "Firestone Tyres." It established and registered in the United Kingdom in 1922 a wholly owned subsidiary company (the appellant in the case) known as Firestone Tyre and Rubber Co. Ltd., (hereinafter called 'Brentford') Brentford at first sold tyres under the Firestone brand in the United Kingdom, they having been manufactured in the United States. In 1928 or thereabout Brentford put up a factory in the United Kingdom and since that date it manufactured and sold Firestone Tyres in the United Kingdom as a licensee of the Firestone trade mark and the patented special processes of Akron. In respect of that trade it was a normal trading company in England and paid tax in the ordinary way.
>
> It however also sold tyres abroad on the continent of Europe to a considerable extent and received the purchase money for those tyres. These tyres were sold at competitive prices. When Brentford sold these tyres to foreign customers, it retained from the price only the production cost of the tyres plus a small over-riding commission. The balance was remitted to Akron. It thus did not itself earn the normal profits of its trading activities. H. M. Inspector of Taxes, assessed Brentford as agent for its

carrying on this trade or business from a permanent establishment in Jamaica, Firestone Tyre and Rubber Co. (supra), is of no assistance since what it found was that the trading was conducted through the agency of Brentford.

Mr.Hamilton does not however rely, rightly in my view, on agency of the local companies as satisfying the concept of permanent establishment, since the agency as defined and circumscribed in Article 4, paragraph 5 of the Treaty is much narrower than that found in the Firestone Tyre and Rubber Co. case. Thus no assertion could be sustained that T.E.I. Ltd. was trading from a permanent establishment in Jamaica within the meaning of that paragraph. It neither had a stock of goods in Jamaica from which the local companies filled its orders, nor was there any evidence that the local companies had any authority to conclude contracts in the name of T.E.I. Ltd. Mr. Hamilton could not therefore fault and did not attempt to fault the learned judge's conclusion on the facts that Article 4, paragraph 5 of the Treaty was inapplicable.

Mr. Hamilton rested his submissions fairly and squarely on Article 4, paragraphs 1 and 2. He invited us, as he did the learned judge, to embrace and adopt as persuasive authority the commentary of Mr. Michael Edwardes-Ker on "The International Tax Treaties" in a publication of the O.E.C.D. intituled "The International Tax Treaties Service." It is the contention of Mr. Hamilton that the non-resident company be it T.E.I. Ltd. or Carreras Rothmans Limited was using the local company's "factory" which under Article 4, paragraph 2 is listed as a permanent establishment. However, as submitted by Mrs. Hudson-Phillips, Article 4, paragraph 2 which specified "factory" as included in the concept of permanent establishment has to be read in the context of Article 4, paragraph 1 which required that the business of T.E.I. Ltd. must be shown to be wholly or partially carried on at the factory by personnel of the aforesaid company.

Mr. Hamilton sought to get over this difficulty by submitting that paragraphs 2, 4 and 9 of Mr. Michael Edwardes-Ker's commentary on Article 5 (1) of the International Tax Treaties which Article is in pari materia with our Article 4 (1), when read together cover the facts of the instant case.

> "principal Akron on the normal profits derived from this overseas trade. Brentford objected that these were not agency profits, or if they were, then they were not profits of a trade carried on in England. The course of business of Brentford in regard to this overseas trade arose out of two agreements, one was an agreement between Akron and Brentford, the other between Akron and its foreign distributors. In this latter agreement Akron undertook by itself or through one of its subsidiaries to supply tyres at a fixed price to the overseas distributors who undertook to stock, sell and distribute only firestone brand tyres. Akron's agreement with Brentford recited the fact that the parties were desirous of concluding an agreement for the fulfilling by Brentford of orders obtained in Europe and elsewhere by Akron. Brentford in this agreement undertook as far as it could, to fill orders for the European market obtained from Akron, charging the latter the cost of production to fulfill the order plus five percent to cover overheads. The balance of the sales proceeds from the European market was to go to Akron. The course of business did not however proceed in strict conformity with the agreements, because Akron never by itself made any deliveries. It merely supplied its overseas distributors with a list of its manufacturers including Brentford and the distributors placed their orders direct with Brentford who fulfilled the orders and apportioned the proceeds in terms of its agreement with Akron."

On the above facts Harman, J., concluded thus at p. 122 Tax Cases Volume 37:

> "Then it seems to me merely idle to say that in those circumstances, even though the sale be a sale by Brentford of its own tyres, as they undoubtedly are its own tyres, that is not a sale which vis-a-vis Akron can be said to be done as Akron's agent. It is performing Akron's obligations to the Swedish company. Akron performs its obligation through its agent the English company. That is how Akron does its business in Sweden and I think it would be shutting one's eyes to the facts to deny that in those circumstances there was a business of Akron's being carried on in this country by its agent, Brentford."

The activities of the local companies in the instant case which were substantially similar to those of Brentford in the Firestone Tyre and Rubber Co. case (supra), undoubtedly constituted, as was implicit in the learned judge's findings, the carrying on of a trade or business in Jamaica by a non-resident company. It matters not whether it is T.E.I. Ltd. or Carreras Rothmans Limited who is carrying on this trade or business.

However, with regard to the issue whether having regard to the manner in which the trade was organised and conducted, T.E.I. Ltd. was

Paragraphs 2, 4 and 9 of the commentary of Mr. Michael Edwardes-Ker stated thus:

"2. Paragraph 1 gives a general definition of the term 'permanent establishment' which brings out its essential characteristics of a permanent establishment in the sense of the convention, i.e., a distinct 'situs', a 'fixed place of business'. The paragraph defines the term 'permanent establishment' as a fixed place of business through which the business of an enterprise is wholly or partly carried on. This definition, therefore, contains the following conditions:

- the existence of a 'place of business, i.e., a facility such as premises or in certain instances, machinery, or equipment;

- this place of business must be 'fixed' i.e., it must be established at a distinct place with a certain degree of permanence;

- the carrying on of the business of the enterprise through this fixed place of business. This means usually that persons who, in one way or another, are dependent on the enterprise (personnel) conduct the business of the enterprise in the State in which the fixed place is situated."

"4. The term place of business covers any premises, facilities or installations used for carrying on the business of the enterprise whether or not they are used exclusively for the purpose. A place of business may also exist where no premises are available or required for carrying on the business of the enterprise and it simply has a certain amount of space at its disposal. It is immaterial whether the premises, facilities or installations are owned or rented by or otherwise at the disposal of the enterprise. A place of business may thus be constituted by a pitch in a market place, or by a certain permanently used area in a Customs depot (e.g. for the storeage of dutiable goods). Again the place of business may be situated in the business facilities of another enterprise. This may be the case for instance where the foreign enterprise has at its constant disposal certain premises or a part thereof owned by the other enterprise."

"9. The business of an enterprise is carried on mainly by the entrepreneur or persons who are in a paid-employment relationship with the enterprise (personnel). This personnel includes employees and other persons receiving instructions from the enterprise (e.g.

> "dependent agents) the powers of such personnel in its relationship with the third parties are irrelevant. It makes no difference whether or not the dependent agent is authorised to conclude contracts if he works at the fixed place of business."

Mr. Hamilton's contention is that the non-resident company uses the local company's factory which has a fixed situs. This satisfies the first two conditions for the existence of a permanent establishment postulated by Mr. Michael Edwardes-Ker, because under paragraph 4 of the commentary the factory is not required to be owned or rented. It is sufficient if it is at the disposal of the non-resident company. With regard to the third condition namely that the conduct of the business must be by persons who in one way or another are dependent on the enterprise, Mr. Hamilton emphasises before us as he did before the learned judge that this condition is qualified by the word "usually" meaning that though it is usual for the conduct of the business to be in the hands of persons who are in a "paid employment relationship" with the non-resident, such does not exhaust the category of personnel who can conduct the business. This he submits is made crystal clear by paragraph 9 which extends the class of personnel to include "other persons receiving instructions from the enterprise (e.g. dependent agents)."

In the instant case says Mr. Hamilton, the clear undisputed evidence was that cigarettes were manufactured, packaged and supplied to Caricom customers of T.E.I. Ltd. on its specific instructions. There was a contractual relationship between this company and Carreras Group Limited for the services and facilities provided by the latter. Under the agreement evidenced by the memorandum from Carreras Overseas Division (Exhibit 17) the local companies were bound and obliged to act on the specific instructions of T.E.I. Ltd.

The learned judge rejected this process of reasoning by which the appellant sought to establish that the non-resident enterprise had a permanent establishment in Jamaica. He came down firmly on the need for some "element of inter-facing between resident and non-resident personnel. The learned judge continued thus:

> "In my opinion the passage cited, notwithstanding the use of the word 'usually' is more in keeping with established practice and with the widely held view, that, the predominant meaning of 'permanent establishment' in such Treaties involves some organization or arrangement where there is a presence in one form or another, of the overseas organization in the country of taxation."

Though regrettably I do not share the learned judge's finding that all arrangements between the local company and T.E.I. Ltd. were at arms length having regard to my conclusion on the inter-relationship of the companies, I am however, in entire agreement with him that the process of reasoning of Mr. Hamilton by which he sought to establish that T.E.I. Ltd. had a permanent establishment in Jamaica is untenable.

The materials utilised in the manufacture of the cigarettes are not the property of T.E.I. Ltd. The personnel of the local company have no contract of service with T.E.I. Ltd. The arrangement with T.E.I. Ltd. amounts to no more than that the local company for a consideration uses its own materials and its own personnel to manufacture in its own factory to the order of T.E.I. Ltd. cigarettes for sale by the latter to Caricom buyers. The obligation of the local companies and or their personnel to comply with the instructions of T.E.I. Ltd. is a consequence of a valid commercial contract not the result of a master servant arrangement. The personnel of the local companies at no time changed their character from being personnel of the aforesaid local companies. The arrangement is not dissimilar to that in Firestone Tyre and Rubber Co. (supra), on which Mr. Hamilton relied, but in that case what was established was agency. The case did not establish that the personnel of the English Company underwent ad hoc transmutation into personnel of Akron.

Firestone Tyre and Rubber Co., did not involve any question of Double Taxation and was not concerned with whether there existed in the United Kingdom a "permanent establishment" of Akron in which it conducted its business. It was concerned simply with the question whether a non-resident company was trading in England. However, in arriving at the decision that Akron was trading in England, it became necessary to analyse and determine the method by which this trade was conducted. Harman, J., determined this issue in these words: "Akron performs its

"obligation through its agent the English Company. That is how Akron "does its business in Sweden, and I think it would be shutting one's "eyes to the facts to deny that in those circumstances there was a "business of Akron's being carried on in this country by its agent "Brentford." (Underlining mine)

Lord Evershed, M.R., in the Court of Appeal, Tax cases Vol. 37, p. 131, concluded this issue in these words:

> "If Akron is carrying on this trade within the United Kingdom, then for the purposes of General Rules 5 and 10 which I have read, is Brentford its 'regular agent'? To my mind the answer to the question must be in the affirmative. If the conclusion is right that Akron is trading in the United Kingdom, then it must be doing so through someone's agency, since admittedly Akron is not itself here nor are any of its officers, nor has it got here any branch or office."

There is nothing in the trading arrangement in the present case differentiating it in any significant way from the case cited above. Thus if the facts constituted trading through an agent in the case of the Firestone Tyre and Rubber Co. (supra), so must it be in the present case. Beyond this as I have earlier said, the case provides no further guide or assistance, because trading through an agent is not by itself synonymous with trading through a permanent establishment as understood in Taxation Treaties. It is precisely for the avoidance of such faulty conclusions that Article 4, paragraph 5 which the learned judge correctly found to be inapplicable, provided that a dependent agent, who is conducting business activities from his own business place, had in addition to satisfy one or other of two conditions specified in the said paragraph before he is deemed to be a permanent establishment of the non-resident.

In my opinion, the appellant cannot on the facts, establish that T.E.I. Ltd. had a permanent establishment in Jamaica as defined in Article 4 (1) and (2) and since the agency of the local company which is established on the evidence, did not fulfil the additional requirements to come within Article 4, paragraph 5 of the Treaty, the learned judge was right in finding that there was under Article 5 no industrial or commercial profits of T.E.I. Ltd. or Carreras Rothmans Limited on

which Carreras Group Limited could be assessed as agent for either of the former.

I would accordingly dismiss grounds 1 and 2 of the appellant's appeal.

With regard to ground 3, Mr. Hamilton submitted that, firstly, the uncontroverted evidence established that all payments to any of the group companies in the United Kingdom were funnelled through Carreras Rothmans Limited's account. Secondly, it was Carreras Rothmans Limited who dealt with the companies in Jamaica on behalf of the United Kingdom groups. Thirdly, there was no reference whatsoever to T.E.I. Ltd. in any account kept by the local company. In this state of the evidence it was, he submitted, patently clear that whoever of the United Kingdom group would be ultimately interested in the proceeds of the trading activity, it was Carreras Rothmans Limited who whether as agent or as principal received such proceeds.

In my opinion had the evidence established the existence of a permanent establishment, the non-resident on record who could be liable to be assessed as having carried on the trading and receiving the proceeds through credit to its account would have been Carreras Rothmans Limited. This is so because even accepting as correct the ipse dixit of the witnesses, the documentary evidence establishes that it was Carreras Rothmans Limited who, as the authorised agent, acting on behalf of the United Kingdom Group including T.E.I. Ltd. transacted the business with the Jamaican companies. In this regard I refer in particular to Exhibit 9 which empowered Carreras Rothmans Limited to act as agent for Rothmans International Limited regarding all its trading and pre-merger interests. This as I have shown would in my view empower Carreras Rothmans Limited to act for T.E.I. Ltd. a wholly owned subsidiary of Rothmans International Limited. Even Exhibit 17 setting out the financial arrangement for the manufacture of the cigarettes in Jamaica on which the respondent relies does not disclose that it originated from T.E.I. Ltd. but rather from "Carreras Overseas Division."

The submission of Mr. Hamilton on this ground of appeal is well founded and though in the circumstances which now obtains it is merely of academic interest, this ground of appeal is allowed.

For the reasons given and conclusions reached in respect of grounds 1 and 2 of the appeal, the appellant's appeal fails and ought accordingly to be dismissed and the judgment and order of the learned judge of the Revenue Court affirmed.