BETWEEN:

1943 Feb. 22-23 — 1945 Aug. 21

FREDERIC J. A. DAVIDSON, SUPPLIANT,

AND

HIS MAJESTY THE KING, RESPONDENT.

Petition of right—Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, Chap. 97, secs 5 (a), 6 (b), 33, 53, 54, 58, 69—Nature and purpose of depreciation allowance—No right to depreciation allowance where no claim made—Beneficiaries of estate entitled to income not entitled to depreciation allowances—Taxpayer's return may be basis of jurisdiction to assess—Right to refund of overpayment of tax if disclosed by examination of returns—Mistake in making returns—Taxpayer barred from relief if appeal not taken from assessment within time prescribed.

Suppliant was executor of his father's estate. After the death of his mother he became entitled to one half the estate in his own right. The corpus of the other half was to be held for the issue of the suppliant but he was entitled to the income from it subject to an annuity to his brother. Suppliant filed two returns each year, a T-3 return as executor of the estate and a T-1 return as an individual taxpayer. In the T-3 return he gave particulars of the income of the estate, the interest paid on borrowed money, the taxes paid on properties, the expenses for maintenance and repairs and the amounts claimed for depreciation and also showed the amounts of income accruing to beneficiaries. In his T-1 return he included as his income the same amount as that shown on the T-3 return as accruing to him as beneficiary. Suppliant received assessment notices in due course and filed no appeal from any of them.

Suppliant claims that he made overpayments of income tax for each of the years 1917-1934 by mistake in failing to deduct from income from the estate amounts allowed to it for depreciation, that such mistake was known to the taxing authorities and that he had a statutory right to refund of the overpayments made.

Held: (1) that where no claim for depreciation was made by a taxpayer there was no duty on the part of the Minister under section 5 (*a*) to make any allowance of depreciation to him and the taxpayer had no statutory right to any allowance.

(2) That the beneficiary of an estate, in so far as he is entitled only to income from it, is not entitled to deduct any amount of depreciation in respect of such income, since it is not his assets but those of the estate that have been used in the production of such income. Any amount that may be allowed for depreciation being an item of capital enures to the benefit of the estate and those entitled to its corpus.

(3) That an examination based upon the taxpayer's own return of his taxable income cannot be said to be an assessment made without jurisdiction to assess.

(4) That the term "such examination" in section 53 (2) means the examination not only of the taxpayer's T-1 return but also of any other return that would normally be looked at in the course of the examination and that in the present case it would include the T-3 return made by the suppliant as executor of the estate.

(5) That section 53 (2) was meant to cover cases where it is clear from the examination of the returns that there has been an overpayment of income tax by the taxpayer and where the exact amount of such overpayment is clearly ascertainable, as, for example, where the overpayment was due to an error in computation of rates or calculation of amounts or failure to make or subtract specified deductions. It does not cover cases involving an adjudication as to rights.

(6) That the suppliant having failed to take advantage of the provisions of the Act by way of appeal from the assessment is now barred from relief by section 69.

PETITION of right to recover overpayment of income tax alleged to have been made by the suppliant in respect of the years 1917-1934.

The petition was heard before the Honourable Mr. Justice Thorson, President of the Court, at Ottawa.

J. C. McRuer, K.C. and *T. C. Newman, K.C.* for suppliant.

O. M. Biggar, K.C. and *W. R. Jackett* for respondent.

The President now (August 21, 1945) delivered the following judgment.

The suppliant brings this petition of right to recover the sum of $11,144.77 as the total amount of overpayments of income tax alleged to have been made by him in respect of the years 1917 to 1934.

The suppliant is one of the executors of the estate of his father, Joseph Davidson, who died on March 1, 1901. His mother was entitled to an annuity of $3,000 per year out of the income of the estate for the support and maintenance of herself and her son, Judson France Davidson, now a co-executor of the estate, but after her death on November 18, 1922, the suppliant became entitled to half of the estate in his own right. The corpus of the other

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half was to be held for the issue of the suppliant, but he was entitled to receive the income from it subject to an annuity to his brother and co-executor, Judson France Davidson, the amount of which, after certain judicial proceedings to determine the meaning of certain clauses in the will, was agreed upon at $2,200 per year.

The suppliant has managed the estate since the death of his father. It was in a difficult and confused position when he took it over, consisting mainly of real estate, against which there were substantial liabilities.

After the Income War Tax Act came into effect in 1917 the suppliant made two sets of returns each year, one known as the T-3 return as executor of the estate, and the other as the T-1 return as an individual taxpayer. By this time the suppliant had a secretary to assist him in the management of his affairs and those of the estate and it was one of the duties of the secretary to prepare the income tax returns. While he relied upon his secretary for the accuracy of these returns, it is also a fact that he checked the correctness of some of them himself and that he always kept in close personal touch with the administration of the estate.

The T-3 returns gave particulars of the income of the estate, the interest paid on borrowed money, the taxes paid on its properties, the general expenses incurred for repairs and maintenance, and the amounts claimed for depreciation. They also showed the amounts of income accruing to beneficiaries, including the suppliant, and the names and addresses of such beneficiaries. The T-3 was an information return. On the suppliant's own T-1 return as an individual taxpayer he included as his income the same amount as had been reported on the T-3 return as income accruing to him as beneficiary. In due course he received assessment notices from the taxing authorities. In some cases such notices showed that no further income tax was due, in others that further tax was payable, which the suppliant subsequently paid, and in others that an overpayment of tax had been made in which case they were accompanied by a refund. No appeal was ever taken from any of the assessments made in any of the years in question.

In his petition of right the suppliant claims that on the T-3 returns filed on behalf of the estate claims were made for depreciation on certain improved real estate owned by the estate, the income from which he was entitled to receive, but that on his own T-1 returns he by mistake neglected or omitted to deduct the amount so claimed for depreciation, but by mistake paid on the gross income without making such deduction which he was entitled to make. He also claims that his mistake was known to the taxing authorities and that it was the duty of the Minister and or his officials, as soon as they discovered this overpayment in each year, to refund the amount so overpaid. The suppliant then sets out the amounts which he claims were overpaid in each of the years.

There is nothing to show how each of these amounts is arrived at nor were any of them proved.

It was contended for the respondent that even if the suppliant ever had any right to relief such right was now barred by his failure to follow the procedure prescribed by the Income War Tax Act, R.S.C. 1927, chap. 97. Section 58 of the Act, prior to its amendment in 1944, read as follows:

> 58. Any person who objects to the amount at which he is assessed, or who considers that he is not liable to taxation under this Act, may personally or by his solicitor, within one month after the date of mailing of the notice of assessment provided for in section fifty-four of this Act, serve a notice of appeal upon the Minister.

Such notice must be in writing and be served by mailing the same by registered post addressed to the Minister of National Revenue at Ottawa. It must follow a prescribed form and set out clearly the reasons for appeal and all facts relative thereto. The section is, I think, wide enough to cover any cause of complaint by a taxpayer. Then section 59 provides that the Minister shall duly consider the notice of appeal and affirm or amend the assessment and notify the appellant by registered post. If the taxpayer is dissatisfied with the Minister's decision, he may, by section 60, within one month from the date of the mailing of the decision, mail to the Minister by registered post a notice of dissatisfaction together with a final statement of the facts, statutory provisions and reasons he intends to submit to

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the court in support of the appeal. Section 61 provides for security for costs, section 62 for the decision of the Minister upon receipt of the notice of dissatisfaction and statement of facts and section 63 for the transmission of the necessary documents to the Exchequer Court of Canada. When these have been transmitted the matter is deemed to be an action in the said court ready for trial or hearing. Then section 66 provides:

> 66. Subject to the provisions of this Act, the Exchequer Court shall have exclusive jurisdiction to hear and determine all questions that may arise in connection with any assessment made under this Act, etc.

This language is, I think, clearly wide enough to cover questions affecting the validity or correctness of the assessment and any complaint the appellant may allege or have against it. Then section 67 provides:

> 67. An assessment shall not be varied or disallowed because of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision up to the date of the issuing of the notice of assessment.

Finally, the part of the Act dealing with appeals and procedure concludes with section 69 as follows:

> 69. If a notice of appeal is not served or a notice of dissatisfaction is not mailed within the time limited therefor, the right of the person assessed to appeal shall cease and the assessment shall be valid and binding notwithstanding any error, defect or omission therein or in any proceedings required by this Act.

If the suppliant had any right to relief from the income tax levied against him by any assessment on the ground that he had made a mistake in his return he could have appealed from the assessment in accordance with the above procedure and the court could have given effect to his rights if established by setting the assessment aside. Then, if he failed to recover the amount of tax he had overpaid the way would be clear for a petition of right by him without being faced by a valid and binding assessment. The suppliant never made any appeal from any of the assessments but now seeks to recover the amounts which he alleges he overpaid. Counsel for the respondent contended that the suppliant was barred from relief by section 69. It is well established that if the law prescribes the procedure to be followed by an aggrieved person in obtaining relief such procedure must be followed. The assessments are, there-

fore, now binding upon the suppliant and his case must fail unless he can bring himself outside the implications of section 69 and show his entitlement to relief apart from the procedure prescribed by the Act. The onus is on him and it is a heavy one for the language of section 69 is very wide.

Counsel for the suppliant contended that the assessments made in each of the years in dispute were invalid. Two lines of attack upon their validity were laid down. In the first place, counsel relied upon section 5 (*a*) of the Act, as it stood prior to its amendment in 1940, which read as follows:

> 5. "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:—
> (*a*) Such reasonable amount as the Minister, in his discretion, may allow for depreciation,

and upon the judgment of the Judicial Committee in *Pioneer Laundry and Dry Cleaners, Limited* v. *Minister of National Revenue* (1), where Lord Thankerton said, at page 136:

> the taxpayer has a statutory right to an allowance in respect of depreciation during the accounting year on which the assessment in dispute is based. The Minister has a duty to fix a reasonable amount in respect of that allowance........

Counsel's argument was that under the section the suppliant had a statutory right to an allowance for depreciation, that the Minister was under a statutory duty to exercise his discretion in allowing a reasonable amount for depreciation, that the exercise of such discretion was a condition precedent to there being a valid assessment and that since there was no evidence that it had been exercised in the suppliant's case the assessments levying income tax against him were invalid and void *ab initio* and the suppliant was not barred from relief by section 69, even although he had not appealed from any of the assessments.

There is more than one answer to this contention. The suppliant never made any claim for depreciation in respect of any of the amounts he reported as income from the estate. It is, I think, clear from section 5 (*a*) that it presupposes that a claim for depreciation has been made and that it is in respect of such a claim that the Minister is to exercise his discretion and allow a reasonable amount. The

(1) (1940) A.C. 127.

use of the word "allow" in the section connotes that there is a claim before the Minister for his consideration. It follows that where no claim for depreciation was made by a taxpayer there was no duty on the part of the Minister under section 5 (*a*) to make any allowance of depreciation to him for there was nothing before him in respect of which he could exercise his discretion. To suggest that the Minister must make an allowance for depreciation to a taxpayer even when he has not claimed any and that his failure to do so will render an assessment invalid and of no effect is, in my opinion, an utterly untenable proposition. If there was no duty on the part of the Minister to make an allowance for depreciation to the suppliant he could have no statutory right to it.

Even if the suppliant had claimed depreciation in respect of the amounts he reported as income from the estate it does not follow that he would have been entitled to it. This aspect of the case was not dealt with by counsel but is, I think, an important one. The depreciation allowance authorized by the Act is not an item of expenditure. It is quite a different thing from the expenses that may properly be offset against receipts in order to arrive at net profit or gain. The depreciation allowance is purely a statutory allowance authorized as a deduction or exemption from what would otherwise be taxable income. Without the statutory authority for its deduction or exemption it would be taxable income. In that sense it is income that is exempt from tax but the true reason for such exemption is that, while it is included in what would otherwise be taxable income arrived at by deducting expenses from receipts, it is in reality an item of capital rather than one of income. That this is so is recognized by the Act itself, for section 6 (*b*) provides:

6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

(*b*) any outlay, loss or replacement of capital or any payment on account of capital or any depreciation, depletion or obsolescence, except as otherwise provided in this Act;

and it is, I think, clear that section 5 (*a*) comes within the exception referred to in section 6 (*b*). The depreciation allowance authorized by the Act is not limited as in the

United Kingdom to depreciation to plant and machinery resulting from wear and tear but extends to any asset used by the taxpayer in the production of his income. Likewise, the allowance is restricted to the assets so used by the taxpayer. The principle underlying the depreciation allowance is that an asset used in the production of income will in time be used up in the course of such production and that it would be unfair to tax the taxpayer on the full amount of the income produced from the use of his asset, since to do so would mean taxing him not only on the income from use of the asset but also on that portion of the asset itself that has been used up in the production of such income. The allowance for depreciation is, therefore, in this sense an item of capital representing the diminution in value of the asset for use in income production and is granted in order to enable the tax payer to keep his tax producing position intact—he will still have his asset with its diminished tax producing value but he will also have the depreciation allowance to make up for such diminished value. A taxpayer whose income comes to him otherwise than from the use of his assets is not entitled to any depreciation allowance in respect of such income. It follows that a beneficiary of an estate, in so far as he is entitled only to income from it, is not entitled to deduct any amount of depreciation in respect of such income, since it is not his assets but those of the estate that have been used in the production of such income. Any amount that may be allowed for depreciation, being an item of capital, enures to the benefit of the estate and those entitled to its corpus.

It should be noted in respect of half of the estate it was to be held as to the corpus for the issue of the suppliant and the supliant was entitled only to the income therefrom subject to the annuity to Judson France Davidson. In respect of the income from this half of the estate the claim of the suppliant that he made a mistake in failing to deduct depreciation from it fails completely for he had no right to any such deduction.

Moreover, the evidence is against the suppliant's contention that he was mistaken as to his rights in the matter of deducting depreciation allowance. As executor of the estate he made full and detailed claims for depreciation in

respect of the various assets of the estate used in the production of its income such as apartment blocks, houses and machinery and, although there is no direct evidence as to any action by the Minister in respect of such claims, it may fairly be assumed that they were allowed to the estate. Then, the suppliant in his own right claimed depreciation in respect of the assets he received from the estate in his own right. While the court order dividing the estate was not made until December 15, 1930, it is clear that there was a division made earlier. This was done sometime after making the 1926 returns, for in the T-1 returns by the suppliant commencing with the year 1927 claims for depreciation were made by him in respect of assets which were formerly shown as assets of the estate. It will be remembered that the suppliant became entitled to half of the estate in his own right on the death of his mother in 1922. The returns show that the suppliant as executor of the estate always claimed depreciation in respect of the assets belonging to it; that from 1927 to 1934 he claimed depreciation in respect of the assets to which he was entitled in his own right; and that he never claimed any depreciation in respect of the amounts which were reported as income from the estate. His whole course showed a correct understanding of when he was entitled to claim depreciation and when he was not.

For the years 1927 to 1934 the suppliant included in his T-1 returns income from assets he had taken over from the estate in his own right and claimed and was allowed depreciation in respect thereof. He also included income from the other half of the estate the corpus of which was held for his issue. In respect of such income he was not entitled to any deduction for depreciation since it did not come from the use of any of his assets. If the amounts received by him from this half of the estate during the said years exceeded the amounts he was entitled to receive as income from it, that was a matter of accounting between the suppliant and the estate and does not entitle him to any relief in these proceedings. I am unable to see any valid claim by the suppliant in respect of the years 1927 to 1934. Likewise, in respect of the years 1917 to 1922, prior to the death of his mother, the suppliant was entitled only to specific

amounts of income from the estate and in respect thereof had no right to any depreciation allowance. His claim in respect of such years also fails. This leaves only the years 1923 to 1926 for consideration. For these years the suppliant's position was a different one. He had become entitled to half of the estate in his own right, and, inasmuch as the depreciation allowance to the estate was a capital item enuring to the benefit of the estate, he was entitled to a half interest in it as being part of the capital of the estate. His share of the capital of the estate, including the depreciation allowance made to it, was, as such, of course not subject to income tax.

The second attack upon the validity of the assessments may now be dealt with. Counsel for the suppliant contended that they were invalid in that they assessed as income that which was not assessable as such, that an attempt was made to tax that which the Act exempted from taxation, namely, the amount allowed to the estate for depreciation, and that in attempting to do so the taxing authorities went beyond their jurisdiction. Counsel relied upon such authorities as *Toronto Railway Company* v. *Corporation of the City of Toronto* (1); *Donohue* v. *Corporation of Parish of St. Etienne de la Malbaie* (2); *Becker et al* v. *City of Toronto* (3); *and Canadian Oil Fields Co.* v. *Village of Oil Springs* (4). All these cases turn on the question of jurisdiction to assess and decide that an assessment made where there is no jurisdiction to make it is a nullity. In my opinion, they have no application to the present case at all. By section 33 of the Income War Tax Act every person liable to taxation under the Act is required on or before the thirtieth of April in each year to deliver to the Minister a return in such form as the Minister may prescribe of his total income during the last preceding year. Then, by section 54 it is provided that after examination of the taxpayer's return the Minister shall send a notice of assessment to the taxpayer verifying or altering the amount of the tax as estimated by him in his return. The suppliant made his T-1 returns in which he stated his income. Each return contains a certificate by him that he has made a full

(1) (1904) A.C. 809.
(2) (1924) S.C.R. 511.
(3) (1933) O.R. 843.
(4) (1907) 13 O.L.R. 405.

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and complete disclosure of his total income from all sources, that the information given therein and the statements of income and expenditure therein and all statements and information contained in any documents furnished therewith are true in every respect and that the expenditures claimed were actually incurred. The taxpayer's own return of his income, while not binding upon the Minister, may be the basis of the assessment made by him. It is reasonable that this should be so since the taxpayer knows better than anyone else what his income is. How, then, can it possibly be said that an assessment based upon the taxpayer's own return of his taxable income is an assessment made without jurisdiction to assess? The question carries its own answer. In my opinion, the fact that the taxpayer's own return of his taxable income may be the basis from which the assessment may be made distinguishes this case from those relied upon by counsel. The taxpayer may make an error in his return by including as income that which may really be capital or by failing to claim a deduction to which he may be entitled, and he may be able on appeal, in the manner prescribed by the Act, to show such error and have the assessment set aside but there is a vast difference between an assessment that is invalid as being erroneous and one that is invalid as being made without jurisdiction to make it. The latter is a nullity and can be attacked in collateral proceedings, but the former is not a nullity and is valid until it is set aside in proceedings taken in conformity with the Act. If the suppliant erroneously included in his T-1 returns of his income items to which he was entitled not as income but as capital any remedy he might have had was by way of appeal from the assessments. The contention of his counsel that each of the assessments for the years 1917 to 1934 was a nullity cannot be accepted. Both attacks on the validity of the assessments fail.

There remains for consideration one other contention. Counsel for the suppliant relied strongly on section 53 which provides as follows:

53. The returns received by the Minister shall with all due despatch be checked and examined.

2. In all cases where such examination discloses that an overpayment has been made by a taxpayer the Minister shall make a refund of the amount so overpaid by such taxpayer, etc.

He contended that the section gave the suppliant a statutory right to a refund of the amounts of income tax overpaid by him. His argument was that the returns made by the suppliant disclosed overpayments of income tax by him, that there was a statutory duty on the Minister to refund such overpayments and that the suppliant had a statutory right to receive such refunds. This is the only section in the Act under which the suppliant has any possible hope for success, but he must show clearly that his case comes within its terms. It is, I think, clear that the primary purpose of the section was to simplify the process of making refunds. Without some such section no refund of an overpayment of tax could be made without an order in council under the Consolidated Revenue and Audit Act, R.S.C. 1927, chap. 178. Where it was clear from the returns that an overpayment had been made by a taxpayer it was deemed desirable that a refund should be made without the necessity of passing an order in council and the Minister was directed to make such refunds. While that was the primary purpose of the section, the language is mandatory and I see no reason why the reasoning that prevailed in the *Pioneer Laundry* case (*supra*) in respect of section 5 (*a*) should not also govern in respect of section 53 (2). If there was a statutory duty on the Minister to make a refund, there was a statutory right in the taxpayer to receive it.

Counsel for the respondent argued that section 53 (2) referred only to examination of returns made by the taxpayer. If this be so, the suppliant has no case under it, for there is nothing in any of his T-1 returns that could disclose any overpayment of income tax by him. Counsel for the suppliant contended, however, that more than merely the taxpayer's returns were referred to. The sections preceding section 53 deal with returns of various kinds, some taxpayer's returns and others information returns, such as the T-3 returns. Section 53 requires the checking and examination of all returns. The interpretation of what is meant by " such examination " in section 53 (2) depends upon what is involved in the examination. The T-1 return is before the assessor for examination; he sees in it an item of income from an estate; this takes him to the T-3 return of the estate. The evidence of Mr. Patterson in the present

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case was that the T-3 returns were always checked against the T-1 returns. I am, therefore, of the view that the term "such examination" in section 53 (2) means the examination not only of the taxpayer's T-1 return but also of any other return that would normally be looked at in the course of the examination and that in the present case it would include the T-3 return made by the suppliant as executor of the estate.

What did such examination disclose? The T-3 returns show for each year the amounts of income accruing to the beneficiaries. In the earlier years there are six beneficiaries, but in the later ones there are only two, the suppliant and his brother, Judson France Davidson. In most of the years the total amount shown as accruing to beneficiaries exceeded the amount of net income of the estate after deduction of the depreciation allowance to it. This fact was apparent to the tax official who examined the returns. The 1922 T-3 return carries the following notation: "Excess of net Income paid Beneficiaries out of Depreciation account. W" The 1923 return carries a similar notation. On the 1924 return the notation is "Excess Income shown as paid to Beneficiaries is paid out of Depreciation Fund and is taxable." Similar notations with some variations in language appear on the T-3 returns for the following years. Counsel for the suppliant contended that it was apparent on the fact of the two returns taken together that the suppliant was making overpayments of income tax, that the notations were proof that the taxing authorities were aware of such overpayments and that the suppliant came within the terms of section 53 (2). I am unable to accept this contention. All that the T-3 returns show is that the total amounts of income accruing to beneficiaries exceed the amounts of net income of the estate left after deducting the amounts of the depreciation allowances. This is not enough to warrant a claim under section 53 (2).

In my opinion, section 53 (2) was meant to cover cases where it is clear from the examination of the returns that there has been an overpayment of income tax by the taxpayer and where the exact amount of such overpayment is clearly ascertainable, as, for example, where the overpayment was due to an error in computation of rates or cal-

culation of amounts or failure to make or subtract specified deductions. It does not cover cases involving an adjudication as to rights. It may be that the suppliant as executor of the estate made a mistake in distributing as income more than he should have distributed as such or in distributing as income that which should have been distributed only as capital but that is a matter of estate administration. And it may well be that the suppliant has paid more income tax because of the distributions by the estate than he might have had to pay if the distributions had been made differently. The fact is that the distributions by the estate were made, whether rightly or wrongly, as distributions not of capital but of income and were reported as such. Likewise, they were received and reported as such by the suppliant and it is this receipt, rather than the source from which it came, that is of primary concern. There was no distribution or division of the capital of the estate until after 1926. It might also be debatable whether, if gross income from the estate was being distributed to beneficiaries as income, there was any right to depreciation allowance to the estate since the purpose of such allowance was not being observed, namely, the maintenance of the estate's tax producing value. I pass no opinion on these questions. Certainly the taxing authorities were not called upon to make an adjudication in respect of them in order to determine whether the returns disclosed that the taxpayer had paid too much tax. Such adjudication might have been made by the court if an appeal from the assessment had been made, but that has nothing to do with the question whether an overpayment of tax was disclosed by the examination of the returns. It must be the examination of the returns, and not the determination of some other matter, that discloses the overpayment.

Moreover, before the suppliant can succeed under section 53 (2) he must show not only that the examination of the returns discloses an overpayment of income tax by him but also that it discloses the exact amount of such overpayment so that the Minister may be able to make a refund of " the amount so overpaid ". The suppliant cannot comply with this requirement of the section. It would, in my opinion, be quite impossible, even it were assumed that there had

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been an overpayment of tax by the suppliant, to take the returns for any one year and ascertain the amount of such overpayment. It is not possible to determine how the amounts of income of the suppliant are arrived at, nor can it be ascertained from the returns how much of it was income to which he was entitled as such or how much of it came out of the depreciation fund or reserve or from some other source.

In my judgment, not only did the examination of the returns in this case not disclose any overpayments of income tax by the suppliant, having regard to the distributions made by the estate, but also, even if that were not so, it would be impossible for the Minister to determine from the returns what refund to make. The suppliant's case falls outside section 53 (2) on both grounds.

While it may well be that the suppliant has in the result paid more income tax than he would have been called upon to pay if he had kept his administration accounts of the estate in better order and made its distributions differently, he has only himself to blame for this state of affairs. Having failed to take advantage of the provisions of the Act by way of appeal from the assessments, by which he might have obtained relief from his mistakes of accounting or distribution, he is now barred from relief by section 69. Under the circumstances, the judgment of the Court must be that the suppliant is not entitled to any of the relief sought by him in his petition of right and that the respondent is entitled to costs.

Judgment accordingly.