1956

April 9

Nov. 13

BETWEEN:

SUBSIDIARIES HOLDING COMPANY LIMITED ..... } SUPPLIANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

Revenue—Income Tax—Overpayment affirmed by assessment—No objection within time limit—Effect on recovery—"Overpayment", meaning of —The Income Tax Act, 1948, S. of C. 1948, c. 52 as amended, ss. 27(d), 38, 42(6), 47, 52, 53 and 127(1)(ay).

In filing its tax return for 1951 the suppliant, whose income was derived from a wholly-owned United States subsidiary and consisted of payments of dividends and interest, claimed as a tax allowance under s. 38 of *The Income Tax Act,* 1948, S. of C., c. 52, taxes withheld at the source on the interest payments. By notice of assessment its claim was disallowed but by a subsequent notice of re-assessment allowed. After the 60 day limit for filing notice of objection provided by s. 53 of the Act had expired, the suppliant under s. 52(1)(*b*) made application for a refund of the full amount of taxes withheld at the source. When refused, it sought to recover by Petition of Right. It alleged that it had in error omitted to claim as a tax allowance the U.S. taxes withheld at the source in respect of the dividends received and that but for such omission its tax return would have shown it was not liable to any tax; that consequently it had made an "overpayment" and under s. 52 was entitled to a refund.

At the trial the respondent admitted that had objection to the re-assessment been made within the time permitted by s. 53 the Minister would have varied the re-assessment so as to make the suppliant entitled to the refund claimed. In its statement of defence it pleaded that the aggregate of the amounts paid on account of income tax did not exceed the income tax payable as fixed by the re-assessment and that there had been no objection to the re-assessment within the time limit therefor by s. 53(1) of the Act as amended and therefore that having regard to s. 42(6) the re-assessment was valid and binding and that, having regard to s. 127(1)(*ay*), there was no overpayment.

Held: That in view of the definition of "overpayment" as contained in s. 53(4) and of the provisions of s. 127(1)(*ay*) the "overpayment" to which the taxpayer is entitled under s. 53 is the aggregate of all amounts paid on account of tax minus all amounts of tax payable as fixed by the assessment or re-assessment.

2. That notwithstanding the fact that the suppliant had paid a substantial amount of taxes, which on a proper construction of the Act it was not liable to pay, it could not now recover such taxes because of its failure to object to and appeal from the re-assessment within the time limited by s. 53.

PETITION OF RIGHT.

The action was tried before the Honourable Mr. Justice Cameron at Ottawa.

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C. F. H. Carson, Q.C. and *Allan Findlay, Q.C.* for the suppliant.

W. R. Jackett, Q.C., J. D. C. Boland and *P. M. Troop* for the respondent.

CAMERON J. now (November 13, 1956) delivered the following judgment:

This is a petition of right filed on October 7, 1954, in which the suppliant seeks to recover the sum of $66,411.31 (and interest thereon), said to be an "overpayment" of income taxes in respect of its taxation year ending on August 31, 1951. The issue is entirely a question of law, the parties relying on the pleadings and on an "Agreement as to Facts" and the appendices thereto (Exhibit 1), the admissions therein made being only for the purpose of the trial. At all relevant times *The Income Tax Act, 1948,* as amended, was in effect and all references herein to the "Act" will be understood as referring to that Act as it was in 1951, unless otherwise stated.

Before considering the relevant provisions of the Act, it is necessary to set out certain of the facts. The suppliant carries on business as a holding company having its head office at Windsor, Ontario. In its 1951 taxation year the suppliant's income totalled $4,894,907.12, of which $4,650,285.33 was received as dividends from its wholly-owned subsidiary Hiram Walker & Sons Inc. (carrying on business in the United States) and the balance of $244,621.79 as *interest* on inter-company advances made to the same company. In computing its taxable income for that year, the suppliant applied the provisions of s. 27(*d*) of the Act and deducted from its income the full amount of the dividends received from its subsidiary. In its return it showed taxable income for the fiscal period at $239,445.53, and that amount, and the tax on taxable income thereon of $103,104.59 are accepted as correct.

From that tax, however, the suppliant was entitled under the provisions of s. 38(1) of the Act to deduct from the tax otherwise payable, the lesser of (*a*) the tax paid by it to the government of a country other than Canada on its income from sources therein for the year, or a proportion thereof computed in accordance with the formula provided

in subsection (1)(*b*). I do not consider it necessary to discuss further the provisions of s. 38(1) in view of the "admission by the Attorney General of Canada", dated April 3, 1956, which will be later referred to.

The suppliant filed its 1951 T2 return at the District Office of the Department of National Revenue at London on February 27, 1952. The schedules attached thereto show that the United States taxes withheld at the source from payments made by Hiram Walker & Sons, Inc., to the suppliant, were at the rate of 15 per cent. on *interest*—a total of $36,693.28—and at the rate of 5 per cent. on *dividends*, a total of $232,514.25. In its return the suppliant claimed as a tax allowance under s. 38 only the former of those amounts, namely, $36,693.28; and after allowing for instalments of taxes already paid, amounting to $61,250, computed the balance of its estimated tax payable at $5,161.31 and paid that amount.

Pursuant to s. 42 the respondent, on March 27, 1952, sent to the suppliant a notice of assessment and therein disallowed the deduction of $36,693.28. On June 6, 1952, he sent a notice of re-assessment in which it was shown that the "foreign tax credit" of that amount was allowed. That notice of assessment showed a tax levied of $66,411.31 and taxes paid on account of a like amount; it therefore showed no overpayment of taxes and no balance of tax payable. In effect, the re-assessment confirmed the suppliant's own estimate of tax payable.

Section 53 confers on the taxpayer the right to object to the assessment by serving on the Minister a notice of objection within sixty days of the mailing of the notice of assessment. It is admitted that the suppliant did not at any time serve such notice of objection within the period provided therefor.

After the said period for serving a notice of objection had elapsed, the auditors, whose certificate appears on the financial statements attached to the return, pointed out to the suppliant that in their opinion a mistake had been made in that return, and that the tax allowance claimed therein should have been all of the United States taxes withheld at the source (that is, a total of $269,207.53, as shown in Schedule A of the return) instead of the amount of $36,693.28 which was only one of the items shown in that

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schedule. The item omitted was that for $232,514.25, being the United States tax withheld at the source in reference to *dividends* received by the suppliant from its subsidiary.

The suppliant immediately drew the matter to the attention of its solicitors and on their advice an application under the provisions of s. 52(1)(*b*) for a refund of the full amount of taxes paid—namely, $66,411.31—was made to the Minister by letter dated September 23, 1952. By letter dated February 4, 1953, the suppliant was notified that the said application would not be granted. Subsequently, there was further correspondence between the solicitors for the suppliant and the Department of National Revenue, the latter stating that "this division is not prepared to make any adjustment in the assessment".

By its petition of right, the suppliant alleges that it erroneously omitted to claim as a tax allowance the amount of $232,514.25 representing United States taxes withheld at the source in respect of *dividends* received by it from its subsidiary; that if such omission had not occurred, the return would have shown that the suppliant was not liable to any tax in that year; that it consequently made an "overpayment" consisting of "instalments previously paid" of $61,250 and its final payment of $5,161.31; and that under the provisions of s. 52(1)(*b*) it is now entitled to a refund of the whole of such "overpayment".

By admission made at the trial, it is now clear that the suppliant, by reason of the provisions of s. 38 of the Act as it read in 1951 (it was materially altered in the following year), was not liable to pay any income tax for the year in question. That admission was as follows:

> For the purpose of this trial, the Attorney General of Canada admits that, if there had been an objection to the re-assessment within the sixty day period permitted by s. 53 of *The Income Tax Act*, the Minister would have varied the re-assessment so as to make the Suppliant entitled to the refund of tax claimed by this Petition of Right—but not, of course, with interest at 6%.

That admission relieves me of the necessity of determining the amount of refund, if any, to which the suppliant may be entitled.

As I have noted, the suppliant relies on the provisions of s. 52 and as much of it is relevant, I shall quote it in full:

52. (1) If the return of a taxpayer's income for a taxation year has been made within two years from the end of the year, the Minister

(a) may, upon mailing the notice of assessment for the year, refund, without application therefor, any overpayment made on account of the tax, and

(b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within 12 months from the day on which the overpayment was made or the day on which the notice of assessment was sent.

(2) Instead of making a refund that might otherwise be made under this section, the Minister may, where the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify the taxpayer of that action.

(3) Where an amount in respect of an overpayment is refunded, or applied under this section on other liability, interest at the rate of 2 per cent per annum shall be paid or applied thereon for the period commencing with the latest of

(a) the day when the overpayment arose,

(b) the day on or before which the return of the income in respect of which the tax was paid was required to be filed, or

(c) the day when the return of income was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than $1.00, in which event no interest shall be paid or applied under this subsection.

(4) For the purpose of this section "overpayment" means the aggregate of all amounts paid on account of tax minus all amounts payable under this Act or an amount so paid where no amount is so payable.

The claim of the suppliant is based on the provisions of subsection (1)(*b*) and of subsection (4). Mr. Carson submits that, subject to the provisions of subsection (2), subsections (1)(*b*) confers on the taxpayer a statutory right to a refund of the "overpayment" (where the Minister has not made the refund at the time of mailing the notice of assessment) provided that the requirements as to time contained therein have been complied with—as is admittedly the case here. I agree with that submission which is not disputed by Mr. Jackett, counsel for the respondent, who also agrees that a petition of right may be brought for the recovery of an "overpayment" in proper cases.

The real dispute between the parties relates to the interpretation to be put upon the word "overpayment" as defined in subsection (4) and more particularly on the phrase "all amounts payable under this Act". Mr. Carson

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submits that the latter phrase clearly means those amounts, which, upon the proper computation of his tax liability under all the provisions of the Act—including, as in this case, the allowance of all deductions from tax to which the suppliant is entitled—a taxpayer is liable to pay. It follows, therefore, he says, that in view of the admission that if an objection to the assessment had been taken in time, it would have been varied so as to make the suppliant entitled to a refund of the amount now claimed, no amount of tax is legally payable by the suppliant for its 1951 taxation year and it is therefore entitled to a refund in full of such "overpayment".

Paragraph 7 of the statement of defence discloses the main ground relied on by the respondent:

7. With reference to the Petition of Right as a whole, he says that the aggregate of the amounts paid by the Suppliant on account of income tax for its 1951 taxation year does not exceed the income tax payable by the Suppliant as fixed by re-assessment and that there has been no objection to the re-assessment within the time limit therefor by subsection (1) of section 53 of *The Income Tax Act*, c. 52 of the Statutes of 1948 as amended; and he says therefore that, having regard to subsection (6) of section 42 thereof, the re-assessment is valid and binding and that, having regard to paragraph (*ay*) of subsection (1) of section 127 thereof, there is no overpayment that can be repaid to the Suppliant.

The sections of the Act therein referred to are as follows:

53. (1) A taxpayer who objects to an assessment under this Part may, within sixty days from the day of mailing of the notice of assessment, serve on the Minister a notice of objection in duplicate in prescribed form setting out the reasons for the objections and all relevant facts.

* * *

42. (6) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a re-assessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

* * *

127. (1) In this Act,

* * *

(*ay*) the tax payable by a taxpayer under Part 1 or Part 1A means the tax payable by him as fixed by assessment or re-assessment subject to variation on objection or appeal, if any, in accordance with the provisions of Part 1 or Part 1A, as the case may be.

Put shortly, the submission on behalf of the respondent is that inasmuch as the amounts of tax paid by the suppliant did not exceed the amounts of tax payable *as fixed by the assessment*, there was no "overpayment"; and that as no objection was taken to the re-assessment within the

time limited by s. 53(1), the re-assessment is valid and binding and cannot be attacked indirectly in proceedings such as the instant one.

Now Mr. Carson admits that the re-assessment made upon the suppliant is valid and binding under s. 42(6) and that it cannot now be attacked. He submits, however, that Parliament in enacting s. 52(1)(*b*) conferred upon a taxpayer a right to a refund of an overpayment separate and distinct from and which did not in any way depend upon the provisions relating to objection to or appeals from the assessment, provided the taxpayer could prove compliance with the time limits set out in s. 52. He agrees at once that were it not for the provisions of s. 52, the suppliant would have no case. He says that the words "amounts payable under this Act" are clear and unambiguous and must be given their plain, ordinary meaning, namely, those amounts which under the Act, when fully and properly construed, are payable by a taxpayer.

He submits further that s. 127(1)(*ay*), which states that the tax payable under Part 1 and Part 1A means the tax payable by a taxpayer as fixed by assessment and re-assessment—subject to variation on objection or appeal—has here no application inasmuch as it refers to "tax payable", words which are not found in s. 52(4). In any event, he says that the definition of tax payable is inapplicable in many cases where the words "tax payable" are used in Part 1. Examples of such sections are s. 41, by which the taxpayer is required to estimate the *amount of tax payable,* and s. 47(1)(*b*) by which a corporation is required to pay certain monthly instalments of the remainder of the *tax payable,* as estimated by it, on its taxable income. In such cases, s. 127(1)(*ay*) would perhaps not be directly applicable inasmuch as the matters referred to were antecedent to the assessment.

After giving the most careful consideration to the very able argument submitted by Mr. Carson and to the various cases cited in support thereof, I have reached the conclusion that the petition must be dismissed. I shall now attempt to set out my reasons for so finding.

The purpose of the refund provisions of s. 53(2) of the *Income War Tax Act* was considered by the President of

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this Court in *Davidson v. The King* (1), and the following extract therefrom is, I think, equally applicable to the provisions of s. 52 of *The Income Tax Act*. At page 171 he said:

> 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 refund.

In interpreting the provisions of s-s. (4) of s. 52, it is of the utmost importance to pay attention not only to the other provisions of s. 52 entitled "Refund of Overpayment" —but to the position which that section bears in relation to what may be called the "machinery" sections of the Act found in Division F of Part 1, entitled "Returns, Assessments, Payments and Appeals". Section 40 requires the filing of the taxpayer's return and s. 41 requires the taxpayer therein to make an estimate of the tax payable. Section 42 requires the Minister to examine the return and assess the tax, interest and penalties, if any, payable for the year; to send a notice of assessment to the person filing the return; and authority is given to the Minister to re-assess or make additional assessments. Sections 44 to 49 provide for payment of tax and sections 50, 51 and 51A provide for interest on tax and for penalties. Following the "refund" section, there are suitable provisions in sections 53, 54 and 55 for objections to assessment and for appeals to the Income Tax Appeal Board and to this Court.

The provisions of s. 52 establish beyond question that the Minister has carried out the duties imposed upon him by s. 42(1) *prior* to the time when he was called upon to ascertain whether the taxpayer has or has not made an overpayment; that is to say that he has assessed the tax payable, if any, and the interest and penalties, if such are payable. Subsection (1)(*a*) authorizes him to make a refund of the overpayment without application therefor "upon mailing the notice of assessment"; and subsection (1)(*b*) requires him to do so upon application "after mailing the notice of assessment" in certain cases.

(1) [1945] Ex. C.R. 160.

When the Minister has made his assessment and has determined thereby the tax payable by a taxpayer for the taxation year, the next step is to ascertain the aggregate of all amounts paid on account of such tax in order that it may be known whether there has been an overpayment or an underpayment; it may be found, also, in many cases that there is neither an overpayment nor an underpayment but that the amounts paid correspond precisely with the tax payable.

In the case of an underpayment, it seems clear that the other item to be taken into account is the amount of tax, interest and penalties *as fixed by the assessment or re-assessment.* Section 50(1) provides for the payment of interest on the difference between the *tax payable* for the year and the amount paid on account of *tax payable;* and by s. 127(1)(*ay*) the tax payable is that fixed by the assessment or re-assessment, subject to variation on objection or appeal. Then by s. 48(1), the taxpayer is required within thirty days from the day of mailing of the notice of assessment to pay any part of the *assessed tax,* interest and penalties then remaining unpaid whether or not an objection to or appeal from the assessment is outstanding.

It seems to me that the Minister in computing the amount of a refund in the case of an *overpayment* must use as the basis of his computation precisely the same data (the amounts paid on account of tax and the tax payable as fixed by assessment or re-assessment) unless the Act in the clearest of terms requires him to do otherwise. I cannot think that Parliament after requiring him to assess the tax payable intended that the Minister in computing the amount of the refund should disregard his own assessment and base the amount of the refund on another and quite different computation.

Were he to do so, the results would be strange indeed. If he were proceeding under subsection (1)(*a*) of s. 52 to make a refund upon mailing the notice of assessment, he would in effect be advising the taxpayer that his tax liability had been fixed by the assessment at a specific amount; but that, in determining the amount of the refund then made, he had disregarded that assessment as erroneously made and based the amount of the refund on some other computation, the details of which the statute does not require him to supply

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to the taxpayer. In effect, that would mean that the Minister is required in such cases to make two separate and perhaps contradictory computations of the tax which a taxpayer is liable to pay. It is obvious that confusion and uncertainty would follow from such a practice—one which I am confident Parliament did not intend.

The submission advanced on behalf of the suppliant means in effect that the Minister, in computing refunds of overpayment, should take into account the tax which under the Act he *should have assessed* against the taxpayer. In substance, therefore, if not in form, these proceedings are in the nature of an attack on the assessment inasmuch as the finding in favour of the suppliant would be equivalent to a finding that the assessment was erroneous. By subsection (6) of s. 42, however, the assessment (which includes a re-assessment) is declared to be valid and binding subject only to being varied or vacated on objection or appeal, or to a re-assessment. I am quite unable to understand how an assessment could remain valid and binding and as determining the tax liability of a taxpayer if, in proceedings other than those laid down for varying or vacating the assessment, a taxpayer has the right to establish that his tax liability is other than that fixed by the assessment. At one and the same time they cannot be both a binding and valid assessment and the right to a refund of an overpayment of tax based on the proposition that the assessment is, in fact, erroneous. To base the amount of the overpayment on anything other than the tax payable as fixed by the assessment would be to disregard entirely the validity and binding effect of the assessment.

If the submission that a claim for a refund is based in part on what the assessment should have been (rather than on the assessment) were approved, it would mean that a taxpayer in claiming a refund by a petition of right would have the right to put in issue any and all of the objections which would have been available to him had he taken advantage of the statutory right to object to and appeal from the assessment. In the present case, for example, if the respondent had not made the admission to which I have referred above, the suppliant would have been required to establish its right to the tax deduction in respect of the dividends received from its subsidiary. But as pointed out

in the *Davidson* case (*supra*), the refund section of the *Income War Tax Act* was not intended "to cover cases involving an adjudication as to rights". In my view, that comment is of equal application to the section now under consideration. Were it otherwise, the provisions of the Act relating to objections and appeals would be by-passed. The Minister would have had no opportunity of reconsidering the matter in the light of the taxpayer's objections; and the Court in considering a petition of right such as the instant one, would be empowered in effect to determine that the assessment was erroneous—an assessment which it would be powerless to declare invalid, since, by the terms of the statute, it is still valid and binding.

Mr. Carson submits that the words "amounts payable under this Act" means the amount for which the taxpayer was liable under the charging sections, including s. 36(1). Now it will be noted that the opening words of that section are "The tax payable by a corporation under this Part upon its taxable income . . ." I see no reason why the definition of "tax payable" as found in s. 127(1)(*ay*) (*supra*) should not apply to that section. I have above stated that the definition may not be applicable in every case in which the words "tax payable" are used in the Act, but it does not follow that the definition section should be totally disregarded. It must be given its full effect when it is clearly applicable such as in s. 36(1). As Mr. Jackett pointed out, s. 127 of the Act—the interpretation section—does not contain the phrase formerly used in such sections—"In this Act, unless the context otherwise requires". Those words were found in s. 2 of the interpretation section of the *Income War Tax Act* but apparently were not carried into *The Income Tax Act,* 1948, because of the applicability to every Act of the Parliament of Canada of the new provisions of *The Interpretation Act,* enacted in 1947 and now found in s. 2 of the *Interpretation Act,* R.S.C. 1952, c. 158. By reason of subsection (3) and (1) thereof, the interpretation section of *The Income Tax Act* may be read as though the opening words contained the expression "unless the context otherwise requires".

Mr. Carson also relied on certain portions of the judgment in the *Davidson* case, to which I have already referred. In that case, the suppliant claimed that he had

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made overpayments of income tax for each of the years 1917 to 1934 by mistake in failing to deduct from income received from his father's estate amounts allowed to it for depreciation; that while his own returns made no claim to such deductions, such mistake should have been known to the taxing authorities who had access to the T3 tax returns in his father's estate; and that he had a statutory right to a refund of such overpayment (notwithstanding the fact that he had not appealed from any of the assessments) under the provisions of that Act relating to refund, namely:

53. The returns received from 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, . . .

The headnote to that case is in part as follows:

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.

* * *

(3) That an assessment 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.

The suppliant there failed on the grounds (*inter alia*) that "the examination of the return did not disclose any overpayment of tax, having regard to the distribution 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".

Mr. Carson's submission is that in the instant case the schedules attached to the suppliant's return clearly showed that the dividends from its subsidiary had been received and that notwithstanding that the suppliant had not claimed tax deduction in respect thereof, a proper examination and determination would have shown that no tax was payable. He submits that the learned President in the *Davidson* case (there being then no definition of "overpayment" in the *Income War Tax Act*) regarded "overpayment" in its ordinary and natural meaning as being "the excess of what was paid over what the taxpayer by the Act rather than the assessment was liable to pay". He refers particularly to paragraph 5 of the headnote which follows almost exactly a statement of the President at page 172. He submits also that the suppliant is in a stronger position than the suppliant in the *Davidson* case inasmuch as its right to the refund is not dependent on an "examination" of the return, that word not being found in s. 52.

I have read the *Davidson* case with care and cannot find therein any express statement that there was a right to recover an overpayment not disclosed by the assessment; that precise question does not seem to have been considered. But even if such an inference could be made, that case is distinguishable from the present one.

It is to be noted that in the *Income War Tax Act* there was no definition of "overpayment"; that s. 53 thereof directed the Minister to make a refund in cases where the *examination* disclosed an overpayment; and that s. 56 authorized him to refund any overpayment at or prior to the issue of a notice of assessment. Under that Act, therefore, it was at least arguable that there was a right to recover an overpayment not revealed by the assessment on the ground that the Act contemplated refund before assessment. In view of the entirely different provisions of s. 52 now under consideration, that it does not authorize the refunding of overpayments until *after the assessment* has been made, and that it contains a definition of overpayment, I am of the opinion that the *Davidson* case on this point is not of assistance in its interpretation.

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One final comment should be made in respect to the meaning of the phrase "amounts payable under this Act". The amounts referred to are undoubtedly amounts of tax (plus interest and penalties, if any). It would seem proper, therefore, to read the phrase as if it were "the amounts of tax payable under this Act"; and applying thereto the definition of "tax payable" found in s. 127(1)(*ay*), there seems little doubt that the phrase means the amounts of tax payable as fixed by the assessment. Such an interpretation, it seems to me, is entirely consistent with the other provisions of the Act in that the validity and binding effect of the assessment are maintained and all disputes between a taxpayer and the Minister as to the amount of tax which the former is liable to pay fall to be determined under the sections relating to objections and appeals from assessments, which I think was clearly the intention of the Act. I can find nothing in the section which suggests that the Minister in computing refund should for that purpose make any computation as to tax liability other than that which he has done in and by his assessment. In my view, he was required to do nothing more than subtract from the aggregate of all amounts paid on account of tax, the amounts of tax payable which he has fixed by his assessment or re-assessment.

Notwithstanding the fact that the suppliant has paid a substantial amount of taxes which, on a proper construction of the Act it was not liable to pay, it cannot now recover such taxes because of its failure to object to and appeal from the re-assessment within the time limited by s. 53.

For the reasons which I have stated the suppliant's claim fails. There will therefore be judgment declaring that the suppliant is not entitled to any of the relief claimed in the petition of right, and dismissing its petition with costs payable to the respondent.

Judgment accordingly.