

IN THE SUPREME COURT OF NEW ZEALAND

SC 74/2015
[2015] NZSC 134

BETWEEN TRUSTPOWER LIMITED
Applicant

AND COMMISSIONER OF INLAND
REVENUE
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: G J Harley and S A Armstrong for the Applicant
D H McLellan QC, R L Roff and C Kern for the Respondent

Judgment: 11 September 2015

JUDGMENT OF THE COURT

- A** The application for leave to appeal is granted (*CIR v Trustpower* [2015] NZCA 253).
- B** The approved questions are:
- (a) Was the Court of Appeal wrong to consider the ground of reassessment set out in the Reassessment letter as irrelevant, or was the Court otherwise acting outside its jurisdiction in determining the appeal? If not, was the Court of Appeal correct in its conclusions on s DA 1?
- (b) Despite stating that it proceeded on the basis of accepting the High Court's findings of fact, were any aspects of the Court of Appeal's judgment based on findings for which there was no evidence before the Court and/or that was contradicted by the evidence before the Court? If so, what is the significance of this?

- (c) **What is the correct approach to determining whether the expenditure of the type at issue in this proceeding has been incurred on revenue or capital account, for the purposes of s DA 2(1) of the Act?**
- (d) **Was the Commissioner correct, or at least not in error, to select the date by which the applicant had decided to apply for a resource consent as the point at which its expenditure was sufficiently connected to the capital purpose of obtaining a resource consent to be on capital account?**
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COMMENT

[1] Subject to the jurisdiction arguments, we do not consider that we can be artificially constrained in our consideration of the third ground of appeal by the proposition that the Interpretation Statement is correct in treating “feasibility expenditure”¹ as being on revenue account and thus that the only question is whether the consents are “feasibility expenditure”.

[2] Whether “feasibility expenditure” is deductible will have to be the subject of argument in the appeal (in case the jurisdiction argument is unsuccessful). Trustpower should also clarify what it submits the taxation treatment of expenditure relating to the consents would be, should one or more of the projects come to fruition.

Solicitors:
Russell McVeagh, Wellington for Applicant
Crown Law Office, Wellington for Respondent

¹ Trustpower says that this term has no technical or defined meaning, under the Act. It refers to research expenditure, incurred by a taxpayer in the ordinary course, and incidental to, the carrying on of business. It can refer to new or a potential new product line, or the possibility of expanding plant or buying new plant. Trustpower submits that the general principles were correctly identified, explained and applied in the Commissioner’s Adjudication Report.