**T P Ltd v Income Tax**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 14 June 1974

**Case Number:** 50/1973 (117/74)

**Before:** Harris J

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*[1] Income Tax – Capital or income payment – Land and construction of buildings to be surrendered to government – Whether a wasting capital asset – East African Income Tax Management Act* 1958, *s.* 14 (1) (*b*)*. [2] Income Tax – Refraint from assessment or collection of tax – No power to grant allowances or vary or reduce assessments – Whether Commissioner has discretion may be decided by court – East African Income Tax Management Act* 1958, *s.* 141*.*

**Editor’s Summary** The appellant agreed with government for the grant of a casino licence in Nairobi for 15 years. At the expiry of the 15 years the land and buildings would revert to government. The appellant claimed to deduct from its income for tax purposes a proportion of the cost of the land and buildings, arguing that the sole purpose of expenditure thereon was the earning of income, and that the agreement to surrender at the end of the term meant that the land and buildings did not constitute a capital asset. The appellant had asked the Commissioner-General to allow a special depreciation allowance under s. 141 and had been told that the section only allowed a decision not to assess or recover tax. On the appellant’s appeal the respondent contended that the decision could not be challenged in any court.

**Held –** (i) the land and buildings were a capital asset; ( ii) the surrender would constitute a loss, diminution or exhaustion of capital; (iii) the question whether the Commissioner-General has the power to act under s. 141 can be decided by the court; it is only a decision actually made under the section which cannot be challenged; (iv) there is power only to refrain from assessing or recovering tax, and not to grant allowances or to vary or reduce assessments. Appeal dismissed.

**Cases referred to Judgment:** (1) *Mallaby-Deeley v. Commissioner of Inland Revenue*, 23 T.C. 153. (2) *Racecourse Betting Control Board v. Wild*, 22 T.C. 182. (3) *Ralli Estates v. Income Tax*, [1958] E.A. 165; [1961] E.A. 48.