Privy Council Appeal No. 3 *of* 1957

Cecil Alexander Speldewinde, Commissioner of Income Tax - *Appellant*

v.

Cyril Shirley De Zoysa - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1958

Present at the Hearing:

LORD REID
LORD TUCKER
LORD SOMERVELL OF HARROW
LORD DENNING
MR. L. M. D. DE SILVA

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal from a judgment of the Supreme Court of Ceylon dated 29th May, 1956, dismissing an appeal on a Case Stated by the Board of Review under section 74 of the Income Tax Ordinance (C. 188). Under that section the decision of the Board of Review is final with a proviso that either party may apply to the Board to state a case on a question of law.

The question before the Board was whether a sum of Rs.144,000 is liable to income tax as profits within the meaning of section 6 (1) (*a*) of the Ordinance :

> Section 6 (1). For the purposes of this Ordinance, " profits and income " or " profits " or " income " means
>
> (*a*) the profits from any trade, business, profession, or vocation for however short a period carried on or exercised.

Trade is defined by section 2:

> " trade " includes every trade and manufacture and every adventure and concern in the nature of trade.

Section 6 (1) (*h*) was at one time relied on but the Case Stated raises only the issue under 6 (1) (*a*).

The position of a court in an appeal by way of Case Stated by the Board of Review is sufficiently similar to the position of a court here on a Case Stated by Special or General Commissioners to make the English decisions helpful.

This matter has been recently considered by the House of Lords in *Edwards* v. *Bairstow* [1956] A.C. 14. That case also dealt with an isolated transaction. The Commissioners had found that the transaction was not an adventure in the nature of trade. A case was stated ; under section 149 of the Income Tax Act as under section 74 of the Ordinance the appeal could only succeed if the court was satisfied that the finding was erroneous in point of law. The House of Lords reversed the decision of the Commissioners.

Lord Simonds said that the court should interfere if the Commissioners had acted without any evidence or upon a view of the facts which could not reasonably be entertained. Lord Simonds in that case failed to find in the facts any item which pointed to the transaction not being an adventure in the nature of trade.

Lord Radcliffe after saying that it was for the courts to lay down the meaning to be given to the words " trade, manufacture, or concern in the nature of trade " continued: " But that being said, the law does not supply a precise definition of the word ' trade ': much less does it prescribe a detailed or exhaustive set of rules for application to any particular set of circumstances. In effect it lays down the limits within which it would be permissible to say that a ' trade ' as interpreted by section 237 of the Act does or does not exist. But the field so marked out is a wide one and there are many combinations of circumstances in which it could not be said to be wrong to arrive at a conclusion one way or the other." In such cases the decision is final unless it is clear from some statement in the case itself that the commissioners have misdirected themselves.

There is some difference of wording between the United Kingdom code and the Ordinance but the above principles are, in their Lordships' opinion applicable and it remains to consider how to apply them to the present case. The facts as found may be summarised as follows.

The respondent's wife was owner of a four acre block of land at Boosa, and had an undivided share in some surrounding land with other co-owners. These lands were requisitioned during the war and the Admiralty erected ten hangars and other buildings thereon. It was the policy of the Naval and Military authorities to give owners of requisitioned land the option of " purchasing " buildings erected thereon. If this option was not exercised the requisitioning authority could themselves remove the buildings and pay compensation for any damage done to the land. The respondent came to an arrangement with the co-owners for surrendering to him their rights in the option above referred to and their rights to compensation for damages. Having this authority as also the authority of his wife for the land which she owned and for the other land he negotiated with the authorities and an agreement was come to on 26th April, 1948, for the handing over to the respondent of nine of the ten hangars for Rs.90,000. About this time the Ceylon Government decided to acquire the lands for the use of a railway but at the time of the agreement the land was still under requisition and therefore the property of the respondent's wife and the other co-owners. There was a demand for these hangars in India and after some troubles the respondent received Rs.279,000 for the nine hangars. After agreed deductions this left a profit of Rs.144,000.

The respondent was assessed on this sum and appealed to the Commissioner under section 71 (2) of the Ordinance. The respondent contended

1. There was really no buying and selling—the improvements accrued to the soil and what the appellant got was compensation.

2. This was an isolated transaction and the profits are of a casual and non-recurring nature.

3. If 1 and 2 fail, the profit is a capital accretion.

Contention (2) is based on the wording of section 6 (1) (*h*) which no longer has to be considered although argument was based as will appear on the transaction being an isolated one. The first contention of the Assessor dealt with this point. His second was :

This was definitely an adventure in trade—the appellant set himself to do this business : section 6 (1) (*a*) applies. The Commissioner decided that the transaction was an adventure in the nature of trade and dismissed the appeal. In considering the contention that this was a capital accretion the Commissioner said this could only be based on the respondent's ownership of the land and he was not the owner. The respondent appealed to the Board of Review which by a majority reversed the Commissioner's decision. The Board of Review attached to the Case Stated their reasons.

The majority thought the Commissioner had not given sufficient importance to the fact that the assessee's wife owned the larger portion of the land on which the hangars were built. They referred to section 21 of the Ordinance which provides that the assessable income of a married woman shall be deemed to be part of the assessable income of her husband except under certain conditions which did not exist in the present case.

Later they say this:—

> "the option to purchase was an accretion to the land of the assessee's wife . . . If the assessee had not exercised the option and purchased the hangars he would have received compensation for the damage to the land. Such compensation would not be taxable. The fact that by exercising the option he has received more than what he would have received by way of compensation cannot render what he has received taxable."

The word "adventure" suggests a man going out to seek the fortune sought to be taxed. Here the materials disposed of had been placed on his wife's land and something had to be done about them. The majority of the Board of Review accepted English decisions to which they refer as establishing that an isolated transaction could be an adventure in the nature of trade. The Supreme Court disagreed with this and upheld the decision of the Board of Review on the ground that an isolated transaction could not be within section 6 (1) (*a*). On this issue their Lordships prefer the view taken by the Board of Review, although the Board was wrong in so far as they held that for an isolated transaction to be such an adventure, it must relate to an ordinary article of commerce,—linen, brandy, paper and so on. (See *Edwards* v. *Bairstow*.) It is however the other circumstances relied on by the Board of Review which have led their Lordships to their conclusion that the appeal should be dismissed. They are not deciding that they would necessarily have come to the same conclusion if they had been sitting as a Board of Review but that there is here a combination of circumstances in which it could not be said to be wrong to arrive at the conclusion appealed against.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed and the appellant will pay to the respondent the costs of the appeal.

(39316) Wt. 8075—17 100 4/58 D.L.

In the Privy Council

CECIL ALEXANDER SPELDEWINDE
COMMISSIONER OF INCOME TAX

v.

CYRIL SHIRLEY DE ZOYSA

DELIVERED BY
LORD SOMERVELL OF HARROW

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