

THE
NEW LAW REPORTS
OF CEYLON

VOLUME LXVII

1963 *Present* : H. N. G. Fernando, J., and T. S. Fernando, J.

THE CEYLON TEA PROPAGANDA BOARD, Appellant, *and*
THE COMMISSIONER OF INLAND REVENUE, Respondent

S. C. 1/1961—Income Tax Case Stated, BRA/291

Ceylon Tea Propaganda Board—Tea Propaganda cess—Liability to income tax—Exemption from profits tax—“ Government institution ”—“ Charitable purpose ”—“ Includes ”—“ Profits ”—“ Income ”—Tea Propaganda Ordinance (Cap. 169), s.8—Income Tax Ordinance (as amended by Act No. 13 of 1959), ss. 2, 5 (1), 6 (1) (a), 6 (1) (g), 6 (1) (h), 7 (1) (a), 7 (1) (d), 8A—Trusts Ordinance, s.99—Profits Tax Act (Cap. 243), ss. 2, 14.

The Tea Propaganda Board, an institution established by the Tea Propaganda Ordinance, was assessed to Income Tax in respect of the years 1950/51 and 1954–1958, and to Profits Tax in respect of the years 1953–1956. The moneys in the hands of the Board consisted principally of the proceeds of the special export duty on tea paid to the Board monthly by the Principal Collector of Customs in terms of section 8 of the Tea Propaganda Ordinance.

Held, (i) that the Tea Propaganda Board was not a “ Government institution ” as defined in section 2 of the Income Tax Ordinance. The fact that it received financial assistance from the Government in terms of section 8 of the Tea Propaganda Ordinance did not render it a Government undertaking. Accordingly, the Board was not entitled to claim exemption from income tax under section 7 (1) (a) of the Income Tax Ordinance.

(ii) that the Board could not claim exemption from income tax in terms of section 7 (1) (d) of the Income Tax Ordinance if only for the reason that it was not a body established for charitable purposes as contemplated in the exemption clause. The activities carried on by the Board did not fall within any of the three categories mentioned in the definition of “ charitable purpose ” in section 2 of the Income Tax Ordinance. The definition of “ charitable purpose ” in that section was intended to be exhaustive and the word “ includes ” therein was not intended to have its ordinary meaning.

(iii) that the proceeds of the export duty received by the Board under the provisions of section 8 of the Tea Propaganda Ordinance were not “ profits ” as defined in paragraph (a) of section 6 (1) of the Income Tax Ordinance, for they could not be regarded as an advantage or pecuniary gain from the

business carried on by the Board. Those receipts were, however, "income" within the meaning of paragraph (h) of section 6 (1) of the Income Tax Ordinance and were, therefore, liable to income tax.

(iv) that the receipts in the nature of proceeds from the special export duty were not liable to profits tax under the Profits Tax Act inasmuch as they were not *derived from* any business within the meaning of section 2 of that Act.

CASE stated under the Income Tax Ordinance.

H. W. Jayewardene, Q.C., with *S. Ambalavanar* and *S. S. Basnayake*,
for the assessee-appellant.

M. Kanagasunderam, Crown Counsel, for the Respondent.

Cur. adv. vult.

June 17, 1963. H. N. G. FERNANDO, J.—

This is a case stated under the Income Tax Ordinance upon the question whether the Tea Propaganda Board which is an institution established by the Tea Propaganda Ordinance (Cap. 169) is liable to be assessed for Income Tax in respect of certain moneys in the hands of the Board. A similar question also arises whether the Profits Tax Act (Cap. 243) applies to the Board.

The Board was assessed to Income Tax in respect of the years 1950/51 and 1954–58, and to Profits Tax in respect of the years 1953–56, and unsuccessfully appealed to the Board of Review against these assessments.

By Act No. 13 of 1959, Section 8 (A), the Income Tax Ordinance was amended by the insertion thereof of express provisions exempting the income of the Board from tax, but subject to an argument as to the implied effect of this amendment, the express exemption does not include within the scope of the exemption liability to tax in respect of the years for which the assessments under consideration were made. The Tea Propaganda Board consists of several members representing various business and commercial interests but in addition three Government officers are *ex officio* members of the Board. The principal purposes for which the Board is established is to advertise Ceylon teas and to create, promote, encourage and further the demand for Ceylon teas in the markets of the world. Section 8 of the Ordinance provides that in order to provide an income for the Board a special export duty is to be levied on the export of tea from Ceylon, the proceeds of which duty are to be paid over monthly to the Board by the Principal Collector of Customs. I shall now refer to each of the grounds upon which counsel for the Board argued that the Board is not liable to be assessed to tax.

Counsel did not seriously press the argument that the Board is a "Government Institution" as defined in Section 2 of the Income Tax Ordinance and therefore exempt from taxation in terms of section 7 (1) (a). It will be seen that the definition specifically mentions certain Government Departments and generally includes "any other Department or undertaking of the Government of Ceylon". The functions of the Tea Propaganda Board are not carried out by Government officers and although some officials are members of the Board, they receive no remuneration on that account from the Government. The fact that in a sense the Government may be regarded as making a contribution towards the expenses of the Board by appropriating to it the proceeds of the special export duty does not render the Board's undertaking a Government undertaking. There are many undertakings, non-governmental in nature, which receive financial assistance from the Government.

The principal argument stressed before us was in the form of a claim that the income of the Board is exempt by virtue of section 7 (1) (d), the Board being claimed to be an institution or trust of a public character established solely for charitable purposes. I do not find it necessary to decide whether or not the Board is an institution of a public character since in any event it is not in my opinion a body established for charitable purposes as contemplated in the exemption clause. By the definition in section 2 of the Ordinance, "Charitable purpose" includes relief of the poor, education and medical relief, and it cannot be said that the activities carried on by the Board fall within any of the three categories mentioned in the definition. Nevertheless it was argued that it was the intention of the Legislature that all purposes held to be charitable in the well known definition expounded by Lord Macnaghten in *Income Tax Special Purposes Commissioners v. Pemsel*¹ should in relation to the application of the Income Tax Ordinance be also regarded as charitable. Reliance was placed in this connection on the ordinary effect given to the word "includes" in statutory definitions, namely, that the enumeration following that word in a definition is not exhaustive. While agreeing that the word "includes" must ordinarily be given that effect, it is clear to me that in the definition of "charitable purpose" in the Income Tax Ordinance the word "includes" was not intended to have its ordinary meaning.

The categorisation of charitable purposes into the four divisions stated in the *Pemsel* case was not unfamiliar to the Legislature of Ceylon for we find in section 99 of the Trusts Ordinance that these same four categories

¹ (1891) A. O. 531.

are included in the definition of a charitable trust with alterations apparently considered necessary for the Ceylon law. It is most likely that the same definition of charitable trust was examined at the time of the enactment of the Income Tax Ordinance, and if there had been any intention that the expression "charitable purpose" should have the same wide meaning as in the Trusts Ordinance, it is strange that the old definition was neither incorporated in the Income Tax law nor adopted by reference. An examination of the original text of the Ordinance also serves to show that the omission from the definition of certain purposes, which do fall within the definition in the trust law, was deliberate. For instance, paragraphs (d) and (e) of the original section 7 mentioned separately both charitable purposes and *religious* purposes, or in other words, an exemption was provided in regard to certain religious purposes independently of their being charitable. It seems clear that since this separate exemption was expressly made in regard to religious purposes, such purposes (which in the trust law are included within the scope of "charitable purposes") were deliberately omitted from the list of purposes specified in the Income Tax Ordinance definition as being charitable. For these reasons I have little hesitation in agreeing with the view expressed by Weerasooriya, J., that the definition of "charitable purposes" in the Income Tax Ordinance was intended to be exhaustive. (63 N. L. R. 409).

A further point argued was that the moneys in the hands of the Board which consist principally of the proceeds of the special export duty are not "profits" or "income" as defined in section 6 (1) of the Income Tax Ordinance.

Having regard to the language and form of section 6, the proper contention would appear to be that those proceeds are not within the meaning of the section *profits from* any trade or business. Sub-section (1) contains a comprehensive definition of the terms "profits and income", "profits", and "income", giving to each of them the same meaning. Accordingly, each such term, when used in any provision of the Ordinance other than the definition itself, bears that comprehensive meaning, even though that meaning may be wider than or different from the ordinary meaning of the term. But in my opinion, the word "profits", when it occurs in paragraph (a) of the definition section 6 (1), bears only its ordinary meaning, namely "advantage, benefit, pecuniary gain, or excess of returns over outlay" (Concise Oxford Dictionary), and the question therefore is whether the proceeds of the duty can be regarded as an advantage

or pecuniary gain *from* the business carried on by the Board. No doubt the Board does carry on a business, namely that of tea propaganda, and may incidentally carry on some other business or some trade, and the proceeds of the duty are received and utilised *for the purpose of* carrying on the business. But these proceeds are not properly profits *from* the business, because they are not earned or produced in the course of or as a result of the business which is carried on. They are in fact received from another source, in the same sense as would be the case if the trustees of a will are directed to make periodical payments to the Board or if the Government had vested land in the Board in order that it may receive an income in the form of rents. If for instance a trading company holds land from which rent is derived and uses that rent for its trading purposes, the Ordinance does not regard that rent as profits from the trade; the liability of that rent to tax arises not through paragraph (a) of section 6 (1), but instead through paragraph (g); so also dividends or interest or annuities received by such a company are liable through paragraphs (e) and (f). With respect, it seems to me that these considerations escaped notice in the *Law Society* case¹, where it was held that the annual grant received by the Society constitutes “profits from a trade or business” (paragraph (a)), and also an annuity (paragraph (f)), and also income from any other source (paragraph (h)). I agree that the grant was taxable either under paragraph (f) or else under paragraph (h), but it was strictly speaking illogical to hold that a receipt is both a profit from a business and also income from *another source*. For myself, I do not agree that the grant is a *profit from a business*.

The case of *Rolls v. Miller*², which is cited in the *Ceylon Law Society* judgment, decided that the maintenance of a lodging house, at which board and lodging was provided free of charge for working girls, constituted a “business”. But the meaning of the term “profits” did not arise in the case; the only question was whether the undertaking was a “business” carried on in breach of a covenant not to use the premises for any business. That decision does not help me to answer the quite different question whether the income, if any, which the organisers probably received in the form of voluntary contributions, fell to be regarded as “profits derived from the business”. Such income would in my opinion be liable to income tax in Ceylon through paragraph (h) of subsection (1) of section 6; it would not be “profits” under paragraph (a), because it is not derived from or through the business. It is noticeable

¹ (1954) 56 N. L. R. 97

² (1884) 27 Ch. D. 71.

in this connection that in the clauses of the Ceylon Ordinance which allow exemptions for religious and charitable institutions, the exemption is allowed for “income” and not for “profits” (section 7 (1) (c), (d) (f)).

Crown Counsel relied upon two other English decisions, one concerning the *Mersey Docks and Harbour Board*¹ and the other concerning the *Port of London Authority*² in which it was held that the two concerns did derive profits from business. The receipts in each case consisted mainly of port, harbour and dock fees paid by users of the harbour or port for services provided, and the profits represented the difference between the amount of the receipts and the expenses incurred in providing the services. The principal question in dispute was whether these were taxable “profits” having regard to a duty imposed by statute in each case to apply the moneys to specified public purposes, and what was held was that this statutory provision did not colour the fact that profits were earned. In each case there was little room for doubt that profits were derived from the business, in the form of payments received for the provision of services rendered in the business of port operators. There was no question, as there is in the case of the Tea Propaganda Board, of receipts which consist mainly of moneys made available to the Board in the form of a grant of the proceeds of an export duty.

This consideration, that a receipt by a business undertaking is not to be regarded as a profit from the business unless earned, derived or produced by or in the course of business operations, does not have the consequence that the proceeds of the export duty received by the Tea Propaganda Board are not liable to income tax. Clearly, these receipts are “income” contemplated in paragraph (h), where the word has its ordinary and wide connotation of periodical revenue receipts *from any source whatsoever*. But that construction has a different consequence upon the liability to the profits tax. Section 2 of the Profits Tax Act (Cap. 243) provides that the Act applies to “every person who derives any profit or income from any business” and proceeds to assign rather a wide meaning to the term “business”. Thus paragraph (b) of Section 2 includes within the definition the holding of immovable property or investments in a case where the functions of a registered company consist wholly or mainly in the holding of such property or investments. But this very paragraph serves to show that except in the stated instance rents, dividends or interest derived by a trading company are not to be regarded as profits or income from its business as a trader. Thus also it seems that royalties which are mentioned in paragraph (g) of section 6 (1) of the Income Tax Ordinance, are not regarded for the purposes of Profits Tax as profits or income from a business.

Here again the question of difficulty is not whether the Tea Propaganda Board carries on a business, for it undoubtedly does so; but the question is whether the proceeds of the export duty are “profits or income” which the Board *derives from* that business.

¹ 2 T. C. p. 25.

² 12 T. C. p. 122.

It might be thought at first sight that the words “ profits or income ” occurring in section 2 of the Profits Tax Act include all the receipts enumerated in the several paragraphs of section 6 (1) of the Income Tax Ordinance. But this first impression is not borne out by section 14 of the Profits Tax Act, which while adopting a number of sections of the Income Tax Ordinance does not adopt section 6. Upon the strict construction which must be given to a taxing statute, there is at least a doubt whether the Legislature intended that receipts in the nature of proceeds from the special export duty should be taxable under the Profits Tax Act.

The case stated by the Board of Review does not contain a statement of questions for determination by this Court, but it is convenient to answer some of the questions stated by the Assessee in the Application for a Case Stated.

- “ 1 : Whether the Ceylon Tea Propaganda Board is liable to Income Tax under the provisions of section 5 (1) of the Income Tax Ordinance or of any other provision of the Ordinance.” : YES.
- “ 2 : Whether the Board is exempt from tax under section 7 (1) of the Ordinance.” : NO.
- “ 3 : Whether the Tea Propaganda cess is “ income ” within the meaning of the Income Tax Ordinance liable to assessment to Income Tax.” : YES, within the meaning of Sec. 6 (1) (h).
- “ 4 : Whether the Tea Propaganda cess represents profits of any “ business ” or “ trade ” or other “ transaction ” as to be liable to any Income Tax under any provision whatsoever of the Ordinance.” : NO.
- “ 9 : Whether the Board is an Institution or Trust of a public character established solely for charitable purposes and therefore exempt from tax under section 7 (1) (c) of the Income Tax Ordinance.” : NO.

In regard to the liability to profits tax, the proper formulation of the question which arises, and the answer thereto, should be :—

“ Is the Tea Propaganda Board liable to pay profits tax upon the proceeds of the Tea Propaganda cess, as being profits or income which the Board derives from a business.” NO. The Board does carry on a business, but the proceeds of the special export duty are not (within the meaning of section 2 of the Profits Tax Act) *derived from any business.*

As the Assessee has been partly successful, I would make no order for costs.

T. S. FERNANDO, J.—I agree.

Appeal partly allowed.