1956 *Present :* Basnayake, C.J., and K. D. de Silva, J.

COMMISSIONER OF INCOME TAX, Appellant, *and* C. S. DE ZOYSA Respondent

S. C. 175—Income Tax Case No. 53/2260/BRA. 236

IN THE MATTER OF A CASE STATED UNDER SECTION 74 OF THE INCOME TAX ORDINANCE (CAP. 188)

Income Tax Ordinance (Cap. 188)—" Trade "—" Business "—Requirement of repetition of activity—Sections 2, 6 (1) (a), 6 (1) (k).

An isolated transaction does not amount to carrying on or exercising a trade or business within the meaning of section 6 (1) (*a*) of the Income Tax Ordinance so as to render the profits of the transaction liable to taxation.

A land owned by the assessee's wife was requisitioned during the war, and the Admiralty erected ten hangars thereon. After the war, availing himself of the concession granted by the Admiralty to owners of requisitioned land of purchasing the buildings erected thereon, the assessee bought nine of the hangars and made a profit by re-selling them.

Held, that the purchase and re-sale of the hangars did not come within the expression " trade " or " business " in section 6 (1) (*a*) of the Income Tax Ordinance. The sum, therefore, earned by the assessee was not liable to tax as being profits within the meaning of section 6 (1) (*a*).

CASE stated under Section 74 of the Income Tax Ordinance.

M. Tiruchelvam, Deputy Solicitor-General, with *A. Mahendrarajah*, Crown Counsel, and *H. L. de Silva*, Crown Counsel, for Appellant.

No appearance for Respondent.

Cur. adv. vult.

May 29, 1956. BASNAYAKE, C.J.—

The assessee's wife owned a four-acre block of land at Boosa and also undivided shares in other surrounding lands. These lands had been requisitioned during the war and the Admiralty had erected 10 hangars and some buildings thereon. By the end of 1947 it became known that the Admiralty was about to move out of the land. As the policy of the Admiralty was to give the owners of land on which it had erected buildings the option of purchasing them, the assessee approached the Senior Surveyor of Lands with a view to buying the hangars. He obtained the permission of the other co-owners of the lands surrounding the four-acre block to negotiate on their behalf with the Admiralty for the purchase

2—J. N. B 61296-1,593 (12/56)

of the hangars, and he also paid them certain sums of money for the surrender of their option to purchase and the right to damage compensation. His negotiations with the Senior Surveyor were conducted through one H. W. Gunatilleke of H. W. Gunatilleke & Company Limited, whose business was the purchase and sale of surplus war materials and supplies.

After the assessee had commenced negotiations with the Admiralty, the Ceylon Government acquired the land for the use of the Railway. Thereafter the assessee continued negotiations with the Railway and agreed to purchase 9 of the hangars at Rs. 90,000. The tenth was sold to a third party later. The assessee himself had no money to purchase the hangars, and H. W. Gunatilleke agreed to arrange the finance on condition that he received one-third share of the net profits. As hangars were in great demand in India, Gunatilleke advertised in the Indian papers and visited India along with the assessee. Many offers were received from India but no sale was concluded as the highest tenderer withdrew his offer after inspection. Ultimately Gunatilleke found a Ceylonese purchaser, one T. B. Beddewela, who agreed to buy the 9 hangars for Rs. 288,000. An advance of Rs. 5,000 was paid and he undertook to pay the balance in instalments but failed to do so. Unable to find the money Gunatilleke gave up the quest retaining for himself the sum of Rs. 5,000 which Beddewela had paid him as an advance. As the Railway was pressing the assessee for payment, he sought the aid of his father, from whom he obtained Rs. 45,000, and the balance Rs. 45,000 he obtained from Senator Cyril de Zoysa. He paid the Railway the full sum of Rs. 90,000 on 15th June 1954. The assessee advertised the sale of the hangars once more, and Beddewela, the previous defaulting purchaser, made a second offer of Rs. 279,000 for a purchaser from Pakistan. The offer was accepted and the sale concluded. A profit of Rs. 189,000 accrued to the assessee out of which he paid Senator Cyril de Zoysa one-fourth share amounting to Rs. 47,250 for the advance made by him. The Assessor agreed to fixing the assessee's share of the profit at Rs. 144,000. It was made up as follows :—

			Rs.
¾th Share of Profit	..	..	141,750
Sale of Corrugated Sheets	..	..	20,250
			162,000
		Rs.	
Less Retained by Gunatilleke	..	5,000	
Expenses including payment to co-owners at Boosa	..	13,000	
			18,000
			144,000

The assessee's income was assessed for the income tax year of assessment 1948–49 at Rs. 200,000 and for the year 1949–50 at Rs. 200,000. He was also assessed for profits tax for the year 1949 at Rs. 200,000. The assessee appealed against these assessments on the ground—

(*a*) that the profits sought to be taxed were in fact capital accretions and not liable to tax, and

(*b*) that the profits were of a casual and non-recurring nature and therefore not liable to tax.

The Commissioner of Income Tax fixed the statutory income from the sale of the hangars for the year 1948–49 at Rs. 144,000 and the profits tax assessment for the year 1949 at the same amount. He allowed the appeal against the assessment for 1949–50. Thereupon the assessee appealed to the Board of Review. The Board by a majority of two to one decided that the appeal against the income tax assessment for 1948–49 should be allowed. The Board also decided that the appeal against the profits tax assessment for 1949 should be allowed. Thereupon the Commissioner of Income Tax, who was dissatisfied with the decision of the Board, applied for a case stated.

The question of law stated for the opinion of this Court is as follows :—

"On the facts established in this case, is the sum of Rs. 144,000 earned by the assessee by the purchase and re-sale of hangars liable to tax as being profits falling within the meaning of section 6 (1) (*a*) of the Income Tax Ordinance ?"

It was urged by counsel for the Commissioner that the assessee had engaged in a trade or business even though it was one act of purchase and sale, and that therefore the profit he made on the sale of the hangars fell within the ambit of section 6 (1) (*a*) of the Ordinance.

It will be convenient, before proceeding further, to examine the relevant provisions of the Income Tax Ordinance. Section 5 of the Ordinance provides that income tax shall subject to the provisions of the Ordinance be charged in respect of the profits and income of every person for the year preceding the year of assessment wherever arising in the case of a person resident in Ceylon. Section 6 (1) defines the expressions "profits and income", "profits", and "income". Among other meanings, these expressions also mean the profits from any trade, business, profession, or vocation for however short a period carried on or exercised. Paragraph (*h*) of section 6 (1) excludes profits of a casual and non-recurring nature from the definition of profits.

I shall now proceed to examine the meaning and content of section 6 (1) (*a*). It is not contended that the assessee carried on any profession or vocation. These expressions need not therefore be considered. It is urged that the purchase and re-sale of the hangars comes within the expression "trade" or "business". These expressions are defined in section 2 of the Ordinance. I shall therefore quote these definitions.

"Trade" includes every trade and manufacture, and every adventure and concern in the nature of trade; "business" includes agricultural undertaking. The expression "trade" is generally used in connexion with the activity of buying and selling [1]. Trade is a term of the widest scope. In its widest sense it indicates a way of life or an occupation. It may in certain contexts have an extended meaning so as to include manufactures [2] as in a law which prohibits offensive or dangerous trades. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. For buying and selling to come within the ambit of the expression "trade", there must be some amount of repetition in the acts of buying and selling. In this connexion it would be appropriate to quote the words of Scrutton L.J. in *Brighton College v. Marriott* [3]:

> "In my view, when any person habitually and as a matter of contract supplies money's worth for full money payment, he 'trades' within the meaning of Schedule D."

This idea is elaborated by Rowlatt J. in the case of *Pickford v. Commissioners of Inland Revenue* [4]. He says:

> "Now of course it is very well known that one transaction of buying and selling a thing does not make a man a trader, but if it is repeated and becomes systematic, then he becomes a trader and the profits of the transaction, not taxable so long as they remain isolated, become taxable as items in a trade as a whole, setting losses against profits, of course, and combining them all into one trade."

This view of the meaning of the expression "trade" in the Income Tax Acts runs through the decisions. Here we have something more than the mere expressions "trade" and "business". These expressions are used in association with the expression "carried on or exercised". The expression "carried on" implies a repetition of acts [5]. When the expression "trade", which even when used by itself implies the concept of a repetition of acts of buying and selling, is coupled with such words as "carried on or exercised", then it is beyond question that there should be a repetition of acts of buying and selling to constitute "trade".

In *Grainger & Son v. Gough* [6], Lord Morris said:

> "There can be no definition of the words 'exercising a trade'. It is only another mode of expressing 'carrying on a business', but it certainly carries with it the meaning that the business or trade must be habitually or systematically exercised, and that it cannot apply to isolated transactions."

[1] *Harris v. Amery, L.R. 1 C. P. 148.*
[2] *Commissioner of Taxation v. Kirk, 1900 A. C. 588.*
[3] *10 T. C. 213 at 227.*
[4] *13 T. C. 262 at 263.*
[5] *Smith v. Anderson, (1880) L. R. 15 Ch. D. 247 at 277.*
[6] *3 T. C. 462 at 472.*

The expression " business " also in a context such as section 6 (1) (*a*) means an activity continuously carried on. Here we have an isolated transaction of sale. The appellant sought to take advantage, as he was entitled to do, of the concession granted to owners of requisitioned land of purchasing the buildings erected thereon. It has been repeatedly held in England that an isolated transaction does not amount to carrying on or exercising a trade or business. The decisions on the point are too numerous to be quoted here ; but I shall content myself with citing the *dicta* from two of the better known cases.

In the case of *Commissioners of Inland Revenue v. Livingston and others*[1], Lord Blackburn said :

> " It is well settled that an isolated trading transaction of a simple character outside a man's ordinary business does not amount to the carrying on of a trade within the meaning of the section so as to render the profits of the transaction liable to taxation. They are casual profits which do not form part of his regular income. "

In *Pickford v. Commissioners of Inland Revenue* (*supra*), Sargant L.J. said (at page 275) :

> " It seems to me perfectly simple and straightforward to come to the conclusion that one transaction was not in itself a carrying on of a trade or business, ... "

Learned counsel for the Commissioner of Income Tax urged that if the transaction in question was not a trade or business it was an adventure or concern in the nature of a trade as contemplated in the definition of trade. For anything to be in the nature of a trade it must have the characteristics of " trade ". As I have said earlier " trade " involves a repetition of activity, and an adventure or concern in which there is no repetition of acts cannot be said to be in the nature of trade.

In the case of *Commissioners of Inland Revenue v. Livingston & others* (*supra*), Lord President Clyde said (at page 542) :

> " I think the profits of an isolated venture, such as that in which the respondents engaged, may be taxable under Schedule D provided the venture is ' in the nature of a trade '. I say ' may be ' because in my view regard must be had to the character and circumstances of the particular venture. If the venture was one consisting simply in an isolated purchase of some article against an expected rise in price and a subsequent sale it might be impossible to say that the venture was ' in the nature of " trade " ' ; because the only trade in the nature of which it could participate would be the trade of a dealer in such articles, and a single transaction falls as far short of constituting a dealer's trade, as the appearance of a single swallow does of making a summer. "

[1] *11 T. C. 538 at 546.*

It is clear from the decisions I have quoted that the purchase and sale of the hangars in the instant case does not come within section 6 (1) (*a*).

There is another fact that must not be overlooked in a consideration of section 6 (1) of our Ordinance and that is that paragraph (*h*) excludes "profits of a casual and non-recurring nature" from the definition of "profits" or "income".

I am of opinion that the Board of Review is right in their decision that the assessee's profit is not liable to tax, and I would accordingly state my opinion in answer to the question that on the facts established in the case the sum of Rs. 144,000 earned by the assessee by the purchase and re-sale of hangars is not liable to tax as profits coming within the ambit of section 6 (1) (*a*) of the Income Tax Ordinance.

There will be no costs as there has been no appearance for the respondent.

K. D. DE SILVA, J.—I agree.

Appeal dismissed.