

[IN THE PRIVY COUNCIL]

1957 *Present*: Earl Jowitt, Lord Radcliffe, Lord Tucker, Lord Denning
and Mr. L. M. D. de Silva

C. A. SPELDEWINDE (Commissioner of Income Tax), Appellant,
and J. L. D. PEIRIS (Executor of the Estate of the late
Mrs. N. C. Peiris), Respondent

Privy Council Appeal No. 26 of 1956

S. C. 27—Case stated under Section 74 of the Income Tax Ordinance

Income Tax Ordinance (Cap. 188)—Death of person carrying on a business—Assessment of his statutory income—Applicability of Section 11 (6)—Sections 5 (1) (a) (b), 6 (1) (a), 11 (1), 11 (2), 11 (6), 11 (9).

When a person who carries on a business dies, section 11 (6) (b) of the Income Tax Ordinance is applicable for the purpose of computing the statutory income of the deceased for the year of assessment preceding that in which he dies.

APPEAL from a judgment of the Supreme Court reported in 58 *N. L. R. 4*.

John Senter, Q.C., with *Sir Reginald Hills*, for the Commissioner of Income Tax, appellant.

Roy Borneman, Q.C., with *H. Major Allen*, for the assessee respondent.

Cur. adv. vult.

October 2, 1957. [Delivered by MR. L. M. D. DE SILVA]—

Under section 5 of the Income Tax Ordinance of Ceylon (Cap. 188 Legislative Enactments of Ceylon) "a year of assessment" commences on the 1st of April each year and ends on the 31st of March of the subsequent year. The tax payable for any year of assessment is computed on the income of the preceding year of assessment subject to the provisions of later sections which, in particular cases, prescribe another period. "Income", "profits" and "profits and income" are each defined to mean the same thing.

Section 5 reads

"5. (1) Income tax shall, subject to the provisions of this Ordinance and notwithstanding anything contained in any other written law or in any convention, grant, or agreement, be charged at the rate or rates specified hereinafter or fixed by resolution under section 20A.

for the year of assessment commencing on the first day of April nineteen hundred and thirty-two, and for each subsequent year of assessment in respect of the profits and income of every person for the year preceding the year of assessment—

(a) wherever arising, in the case of a person resident in Ceylon, and

(b) arising in or derived from Ceylon, in the case of every other person,

but without prejudice to any provisions of this Ordinance which enact that tax is to be charged in particular cases in respect of the profits and income of a period other than the year preceding the year of assessment”.

The Ordinance in Chapter IV makes provision for the “Ascertainment of Statutory Income”, in Chapter V provides for the ascertainment of “Assessable Income” from “Statutory Income”, and in Chapter VI provides for the ascertainment of “Taxable Income” from “Assessable Income”. On Taxable Income tax is levied at the appropriate rate.

It is not necessary for the purposes of this case to consider the steps by which the amount of taxable income is ultimately ascertained; it is sufficient to note that the amount of the taxable income depends in each case upon the amount of the statutory income.

Section 6 provides

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.

The other provisions of the section are not relevant to this case.

The respondent is the executor of a Mrs. N. C. Peiris who had carried on an agricultural business and had died on the 23rd October, 1951. The question for decision in the case is whether the appellant, the Commissioner of Income Tax, has correctly determined the statutory income of the respondent for the year 1950/51.

Subsections 1 and 2 of Section 11 are to the following effect—

11.—(1) Save as provided in this section, the statutory income of every person for each year of assessment from each source of his profits and income in respect of which tax is charged by this Ordinance shall be the full amount of the profits or income which was derived by him or arose or accrued to his benefit from such source during the year preceding the year of assessment, notwithstanding that he may have ceased to possess such source or that such source may have ceased to produce income.

It will be seen that under this subsection the statutory income of a person for any year of assessment is based upon his income for the preceding year. Other subsections of section 11 provide that in particular cases the basis is to be the income of specified periods other than the preceding year.

Subsection 2 of Section 11 is one of such subsections and is to the following effect—

“(2) Where the Commissioner is satisfied that any person usually makes up the accounts of a trade, business, profession, vocation or employment carried on or exercised by him to some day other than the thirty-first day of March, he may direct that the statutory income from that source be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment”

An order was made by the appellant under this subsection but as it makes no difference to the matters which arise for consideration it will not be referred to further.

The appellant contends that on the death of Mrs. Peiris she ceased to carry on her business within the meaning of subsection 6 of Section 11 which is another of the subsections providing a period other than that prescribed by subsection 1. It is to the following effect—

“Where a person whether resident or non-resident ceases to carry on or exercise a trade, business, profession, vocation, or employment in Ceylon, or, being a resident person, elsewhere, his statutory income therefrom shall be—

(a) as regards the year of assessment in which the cessation occurs, the amount of the profits of the period beginning on the first day of April in that year and ending on the date of cessation ; and

(b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the statutory income as computed in accordance with the foregoing subsections, or the amount of the profits of such year, whichever is the greater,

and he shall not be deemed to derive statutory income from such trade, business, profession, vocation, or employment for the year of assessment following that in which the cessation occurs”.

There is a proviso to the subsection which has no bearing on this case.

For the year of assessment 1950/51 the appellant has assessed the respondent under subsection 6 (b) on the income of the year 1950-51 as this income was greater than the income for the year 1949/50.

The respondent contends that subsection 6 has no application to a case of death and that the consequences of death are covered by subsection 9 which is to the following effect—

“Where any person dies on a day within a year of assessment, his statutory income for such year shall be the amount of profits and

income of the period beginning on the first day of April in that year and ending on that day, and the profits and income arising from his estate from such day to the end of the year of assessment shall be statutory income of his executor for that year of assessment, and for the following year of assessment the statutory income of his executor from the estate shall be the profits and income of one year from that day”.

Subsection 9 makes no special provision (as subsection 6 does) for the year preceding the year of assessment in which a person dies and, if the respondent is right, the assessment for 1950/51 would, as he contends, be on the income for the year preceding the year of assessment namely 1949/50.

Their Lordships have had some difficulty in deciding which of these contentions should be upheld. The respondent contends that the words “person ceases to carry on a business” (to be found among others in subsection 6) would be language unusual, if not inappropriate, to describe an occasion where a cessation of business is caused by death. This argument has some weight. But in their Lordships’ opinion it must give way to the consideration that a person on death undoubtedly ceases to carry on business. It was said in the case of *Hunter v. Dewhurst*¹ that “you cannot vacate an office better than by dying in it”. It appears to their Lordships that on death a person does vacate his office, and, equally, that on death a person ceases to carry on a business which he had been carrying on previous to death.

Counsel for the respondent was constrained to concede that section 11 (6) would apply to a case where cessation was not voluntary as for instance when cessation of business is caused by an illness necessitating cessation. Death may supervene in such an instance. It would be a curious result if in the cases of death preceded by an illness necessitating cessation of business section 11 (6) was applicable and in cases of death without such an illness it was not. Death not infrequently occurs soon after an illness has commenced.

The learned judge of the Supreme Court who delivered the main judgment said:—

“I agree with the Board of Review that section 11 (6) is intended only to deal with cases where an assessee does not cease to be “a person” when he ceases to carry on his trade, business, profession or vocation. Section 11 (6) appears to me to contemplate a person who, at the moment of cessation, continues to have a place of “residence” (either in Ceylon or elsewhere) and continues to be a potential income-earner liable to further taxation under the Ordinance.”

This view appears to adopt the argument discussed above which their Lordships have been unable to accept.

It was argued further that subsections 6 and 9 of Section 11 should be regarded as containing mutually exclusive sets of provisions each

¹ 16 Tax Cases, p. 605.

constituting an exception or exceptions to the general rule that assessment for any particular year should be computed on the profits of the previous year. It was argued that subsection 6 was not applicable to cases of death. Subsection 6, however, does not in terms exclude cases of death and subsection 9 does not in terms purport to deal exhaustively with cases of death. It was necessary to enact subsection 9 to provide for the consequences of death in a year of assessment on the computation of statutory income from sources other than the sources "trade, business, profession or vocation or employment" provided for by Section 11 (6), but the necessary provision has been made broadly and the language used has caught up the provisions of Section 11 (6) (a) in so far as it relates to cases of death. The last mentioned fact no doubt lends some support to the argument that neither 11 (6) (a) nor 11 (6) (b) is applicable to a case of death, but in their Lordships' opinion it is not strong enough to defeat the view already expressed. Their Lordships do not think that subsection 9 deals with all the consequences of death.

The Supreme Court also said :—

"Let it be conceded that section 11 (6) prima facie covers a case of 'cessation' by death. Even on that assumption, section 11 (9) is clearly an exception to paragraph (a) of section 11 (6) because it provides for a special computation of the deceased's entire income during the year of assessment, and not merely of his income from one particular source. If, therefore, paragraph (a) of section 11 (6) does not apply in respect of the year in which the death occurred, paragraph (b) of section 11 (6) must also be ruled out as far as the preceding year is concerned."

Their Lordships are unable to agree.

Section 11 (9) is not an exception to paragraph (a) of section 11 (6). Undoubtedly section 11 (9) overlaps paragraph (a) of section 11 (6) but it is not an exception to the provision in the paragraph. Section 11 (9) makes the same provision in respect of income from all sources on the occurrence of death in a year of assessment as paragraph (a) of section 11 (6) does in respect of income from a business and certain other specified sources on a cessation of those sources in a year of assessment. It would be possible to apply the provision so made to the year of assessment in which a person dies under either of the two subsections. Some confusion could have been avoided if the sources covered by paragraph (a) of section 11 (6) had been excepted from section 11 (9) as those sources had already been provided for. But, in their Lordships' view, the failure to do so on the part of the legislature does not make section 11 (6) inapplicable to cases of death.

Their Lordships will humbly advise Her Majesty that the appeal be allowed and the order of the Commissioner restored. The respondent must pay the costs of this appeal and of the proceedings in the Supreme Court.

Appeal allowed.