

1959

*Present : Basnayake, C.J., and Palle, J.*

R. M. FERNANDO, Appellant, and COMMISSIONER OF INCOME  
TAX, Respondent

*S. C. 2—Income Tax Case Stated No. BRA. 247*

*Income tax—Case stated—Death of assessee-appellant—Executor may be permitted  
to be heard by Court—Income Tax Ordinance, ss. 27, 74 (5) and (6).*

Where, pending the hearing of a case stated under section 74 of the Income Tax Ordinance, the assessee-appellant dies, the executor of his last will may be heard by the Court before the question arising on the case stated is determined.

CASE stated under section 74 of the Income Tax Ordinance.

*H. W. Jayewardene, Q.C., with L. P. Fernando, for Assessee-Appellant.*

*V. Tennakoon, Senior Crown Counsel, with L. B. T. Premaratne, Crown Counsel, for Assessor-Respondent.*

*Cur. adv. vult.*

September 4, 1959. BASNAYAKE, C.J.—

This is a case stated for the opinion of this Court under section 74 of the Income Tax Ordinance. After the case was stated and transmitted to this Court the party requiring it to be stated (hereinafter referred to as the appellant) died. The present application is that the Executor of the last will of the appellant "be substituted in his place or added as Appellant."

Once a case stated under section 74 has been transmitted to this Court the death of the appellant does not in any way affect the statutory duty of this Court to hear and determine any question of law arising on the stated case. In a case stated there are no parties in the sense in which that expression is used in a civil action but as section 74 (5) requires that this Court shall hear and determine the question of law arising on the stated case and as sub-section (6) empowers the Court to award costs it is necessary that the appellant should be heard and it is the practice to treat the Commissioner of Income Tax as the opposing party and hear counsel on his behalf. In the instant case it would appear that there is an executor of the deceased appellant's will. Section 27 of the Income Tax Ordinance provides that the executor of a deceased person shall be chargeable with tax for all periods prior to the date of such person's death with which the said person would be chargeable if he were alive, and shall be liable to do all such acts, matters and things as the deceased person if he were alive would be liable to do under that Ordinance. By virtue of that section the executor may ask that he be heard in a stated case. We would therefore treat the present application as an application by the executor to be heard before we determine the question of law arising on the stated case transmitted by the deceased appellant and make order allowing him to appear by counsel at the hearing of the stated case so that he may be heard in support of the appellant's case with the like consequence as if the appellant had been alive and been heard.

PULLE, J.—I agree.

*Executor of deceased assessee-appellant permitted to be heard by Court.*