1969 *Present :* Sirimane, J., and Weeramantry, J.

THE COMMISSIONER OF INLAND REVENUE, Appellant, *and* A. S. NAVARATNARAJAH, Respondent

S. C. 1/68—Income Tax No. BRA/343

Income Tax Ordinance (Cap. 242)—Section 18 (1) (e)—Claim for relief thereunder—Relative maintained by assessee in an educational establishment—Meaning of word "maintained"—Whether dependant's physical residence inside the educational establishment is a pre-condition for relief.

Section 18 (1) (*e*) of the Income Tax Ordinance provides that "an individual resident in Ceylon shall be entitled to claim for any year of assessment that the following allowance be deducted from his assessable income in arriving at his taxable income :—an allowance of two hundred and fifty rupees in respect of each such relative of his or of his wife as, throughout the year preceding the year of assessment, either lived with him and was maintained by him or was maintained by him in any sanatorium, asylum or educational establishment."

Held, that an assessee may be said to have maintained a relative of his in an educational establishment within the meanning of section 18 (1) (*e*) even if the dependant resided physically at a place away from the educational establishment where he received his education.

CASE stated for the opinion of the Supreme Court under the provisions of section 78 (1) of the Income Tax Ordinance.

Mervyn Fernando, Crown Counsel, for the Commissioner of Inland Revenue, appellant.

S. Ambalavanar, with *K. Nadarajah* and *W. H. Perera*, for the assessee-respondent.

Cur. adv. vult.

July 15, 1969. WEERAMANTRY, J.—

This is a case stated for our opinion under the provisions of section 78 (1) of the Income Tax Ordinance, and involves the construction of section 18 (1) (*e*) of that Ordinance. The relevant years of assessment are 1958–59, 1959–60, 1960–61, 1961–62 and 1962–63 and the dependants in respect of whom relief is claimed are two brothers and a sister of the assessee.

These dependants admittedly lived apart from the assessee who during these years held office in the service of Government and was stationed at Puttalam and at Galle. One of the brothers, a medical student, lived at Cotta Road, till he completed his medical education in September

1958. The other brother lived in the ancestral home at Jaffna, where he had his schooling, but lived later in Colombo at premises in Davidson Road rented out by the assessee, and continued his education at Pembroke Academy. The sister likewise had her early education at Jaffna but later came to Colombo and lived at the same address at Davidson Road, and was a student at Navalar Hall. All these persons were, during the period of their education, supported by the assessee.

Section 18 (1) (*e*) offers relief in respect of two categories of persons, namely, those who throughout the year preceding the year of assessment either (*a*) lived with the assessee and were maintained by him, or (*b*) were maintained by him in any sanatorium, asylum or educational establishment. The problem confronting us arises under the second head of relief inasmuch as the dependants concerned did not live with the assessee.

It is submitted for the Crown that since these three dependants resided at a place away from the educational establishment where they received their education, they failed to satisfy the condition of being "maintained . . . in . . . an educational establishment". It is emphasized that the word "in" conveys the idea of residence within the educational establishment in question. Further, the expression "educational establishment", occurring as it does in the context of the words "sanatorium" and "asylum", should, according to the Crown, be construed to mean a residential educational establishment in accordance with the rule *noscitur a sociis*, on the footing that an essential characteristic of sanatoria and asylums is their residential nature.

The assessee on the other hand maintains that residence at the educational establishment is not a requisite and that what the second limb contemplates is support at the educational establishment rather than physical residence therein.

I have not been able to trace in the English statutes, nor have counsel been able to refer me to, any provision corresponding to that we are now considering. There is indeed a provision in respect of child relief corresponding to section 18 (1) (*d*) of our Ordinance[1]. This provision entitles a parent to relief in respect of a child receiving full time instruction at a university, college, school or other educational establishment. On reliefs for educational expenses incurred on dependants, however, the English law would appear to afford us no guidance, and we must approach this question as one of first impression.

The provision we are here construing is one which relieves the tax payer and there would appear to be authority that in such cases neither

[1] *S. 212 (1) and (2) of the Income Tax Act, 1952.*

the tax payer nor the Crown is entitled to the benefit of a doubt in matters of construction [1]. I have not, therefore, in reaching the conclusions set out herein, invoked the usual principle that in the construction of taxing statutes, that interpretation most beneficial to the subject should, in cases of doubt, be adopted [2].

It will be observed that the two alternative heads of relief both contain the word "maintained". In the first limb the requisites for the grant of relief are (*a*) living with the assessee, and (*b*) being maintained by him. In the second limb, the requisite is maintenance in an educational establishment. Since the word "maintained" occurs at two points in the same sentence it would be reasonable to give this expression the same meaning at both places. When the word is first used it is used in a sense which does not include the element of physical residence, for physical residence is made a specific additional condition. When therefore the word "maintained" is repeated in the second limb of this provision it is presumably used in a similar sense, that is a sense which does not include the aspect of physical residence. The word "maintained" would thus appear to be used in relation to educational establishments in the sense of being supported therein rather than in the sense of living and being supported therein.

The word "maintain" when used in the sense of sustenance by providing necessities of life such as food, clothing and shelter does perhaps carry the implication that the place of maintenance is synonymous with the place of residence. When in this sense, it is said of a person that he is maintained at a particular place, it would invariably mean also that he lives at the place mentioned. However the word "maintain" is also used in the sense of supporting a person in a particular state, or, as the Oxford Dictionary puts it, of "paying for the keeping up of" or "bearing the expenses of". In this sense one speaks of maintaining a student at a University or a young advocate at the bar. In such uses of the word the notion of physical residence at the place of support is not by any means a necessary implication.

It is true the problem we are faced with would have been easier of solution had the word used been "at" rather than "in" an educational establishment, but the word "in" by itself is not sufficient, having regard to the reasons I have mentioned, to carry the implication that what the Legislature contemplated was the element of physical residence.

The argument of the Crown based on the rule *noscitur a sociis* does not commend itself to me, for it can scarcely be said that an essential characteristic of the words sanatorium and asylum is a residential element implicit therein. In modern times it is by no means inconceivable that outdoor treatment may be accorded to patients at such institutions;

[1] *Wheatcroft, The Law of Income Tax, Surtax and Profits Tax, p. 1037.*
[2] *Maxwell, Interpretation of Statutes, 11th ed., p. 278.*

and rather than any supposed requirement of residence, their common feature seems to be that they accord to the persons under their care the type of attention which each such establishment is specially equipped to provide.

It is necessary finally to have regard also to the principles underlying the grant of relief under section 18 (1) (*e*). When the Legislature carved out this area of relief it was basically attempting to relieve assessees who were assisting their dependants to obtain an education. The pre-condition for relief was assistance to a dependant in the form of enabling him to pursue a course of studies at an educational establishment. The Legislature's attitude of assistance and approval to assessees pursuing this laudable course could scarcely have been negatived by the circumstance, of little or no materiality in this context, that the dependant had his physical residence apart from his place of education.

To take an illustration that readily comes to mind, it may well be that owing to pressure upon the residential facilities of an educational institution such as the University of Ceylon, some students, being unable to find a place in a hall of residence, are obliged to live away from the campus. Or again, while an educational establishment such as the University of Ceylon at Peradeniya has residential facilities, another similar institution, such as a University at Colombo, may have none. An assessee having two dependants in such institutions, one of whom is in residence and the other is not, would then find himself in the position of being entitled to claim tax relief in respect of one though not of the other, merely for the fortuitous reason of the latter's residence away from the campus. Indeed it may well be more expensive to support a dependant at a place away from an educational institution, particularly in a case such as the present where the appellant has had to rent out premises for his dependants as his official duties compel his residence away from Colombo.

In the absence of compelling words in the provision we are considering, binding us to an interpretation which has so little to commend it, we would hesitate to construe this clause as the Crown suggests, and thereby lose sight of its essential purpose. Had the Legislature desired to make physical residence at the educational establishment a pre-condition of relief, it could quite easily have so stated, as indeed it has done in the parallel provision contained in section 18 (1) (*e*).

For all these reasons, I am of the view that the assessee qualifies for the relief provided in section 18 (1) (*e*) in respect of the two brothers and the sister who were his dependants.

I therefore answer in the affirmative the question of law which has been stated for our opinion. The years for which relief is available in respect of each dependant will be separately determined in accordance with the facts of each case.

The respondent will have the costs of this reference, fixed at Rs. 315.

SIRIMANE, J.—I agree.

Appeal dismissed.