

As the learned Commissioner has refrained from considering the position of the defendant, I cannot sitting in appeal dispose of this action. I set aside the judgment of the learned Commissioner and send the case back for trial before another judge on proper issues.

Sent back for re-trial.

1949

Present : Dias J. and Windham J.

NAVARATNAM, Appellant, and COMMISSIONER OF
INCOME TAX, Respondent

S. C. 221—Income Tax, Case Stated 52/701A/BRA 209

*Income Tax Ordinance—Case stated—Not permitted when there is no tax in dispute—
Cap. 138—Section 74.*

Where it is decided that an assessee is not liable to pay any income tax, it is not open to the Board of Review to state a case on a question of law for the opinion of the Supreme Court under section 74 of the Income Tax Ordinance.

CASE stated under section 74 of the Income Tax Ordinance.

E. B. Wikramanayake, K.C., with C. T. Olegasagarem, for the assessee appellant.

H. W. R. Weerasooriya, Crown Counsel, for the Commissioner of Income Tax.

November 18, 1949. DIAS J.—

We do not think that the assessee has a right of appeal in this case, nor does it appear to us that this is a case which the Board of Review should have stated in the form of "a case" for the consideration of the Supreme Court.

The assessee preferred an appeal to the Board of Review against his assessment. The Board of Review heard the case, decided a point of law which the assessee raised, but held that the assessee was not liable to pay any income tax because his assessable income was less than the taxable limit.

Section 74 (2) of the Income Tax Ordinance provides: "The stated case shall set forth the facts, the decision of the Board and the amount of the tax in dispute". There is no tax in dispute. Therefore it seems to us that the question of law which we are asked to consider is one of pure academic interest and does not arise in regard to any state of facts which merit consideration. We, therefore, think that this appeal should be dismissed, but with liberty to the assessee when his income reaches the assessable limit, if the Income Tax Department still persist in their alleged wrong interpretation of the law, to bring the case up before the Supreme Court. Learned Crown Counsel, Mr. Weerasooriya, does not press for costs.

WINDHAM J.—I agree.

Appeal dismissed.