1954 *Present* : **Gunasekara J. and Fernando A.J.**

PRINS GUNASEKERA, Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent

S. C. 317—Case Stated under the Income Tax Ordinance

Income Tax Ordinance (Cap. 188)—Section 16 (1) (e)—Allowance thereunder—Conditions of (a) common residence and (b) maintenance.

An assessee who bears the expense of the maintenance of a relative is not entitled to claim allowance under section 16 (1) (e) of the Income Tax Ordinance unless he can also show that the relative resided or had his home with the assessee.

CASE stated under section 74 of the Income Tax Ordinance.

N. M. de Silva, with *M. Rafeek*, for the assessee appellant.

M. Tiruchelvam, Crown Counsel, for the Commissioner of Income Tax.

Cur. adv. vult.

July 27, 1954. FERNANDO A.J.—

The decision of the Board of Review for Income Tax, upon which a case has been stated for the opinion of this Court, was in the following terms :—

The appellant is employed by the *Times of Ceylon* and resides at No. 9, Asoka Gardens. His parents live outside Colombo. He has several sisters and brothers. One sister and two brothers attend

school. The sister is a boarder at St. Bridget's Convent and the two brothers at Ananda Sastralaya, Kotte. The appellant pays the boarding fees, buys the school books and generally spends for three children, but even during the period the children are at school the parents sometimes send pocket money and buy clothes for them. When the vacation commences the children go home to their parents. These vacations last for about 2½ months. During that period the children are maintained by the parents. It was admitted here by the appellant's Counsel that the mother was a teacher employed in a Government School and the father owns some property. We regret that we are unable to hold that the sister and the two brothers " lived " with the appellant and was " maintained by " the appellant " throughout the year preceding the year of assessment ". We therefore dismiss the appeal. We make no order as to costs.

The question of law presented in the case stated is whether " the Board of Review was wrong in holding that the sister and the two brothers of the appellant did not live with and were not maintained by the appellant throughout the year preceding the year of assessment ".

The question involves the construction of S. 16 (1) (*e*) of the Income Tax Ordinance (Cap. 188) which entitles a person to claim a deduction from his assessable income of " an allowance of Rs. 250 in respect of each individual *who lived with him and was maintained by him throughout the year* . . . . , who was a relative (i.e., a parent, brother, sister or child) of his or his wife ". If the expression " lived with him " which occurs in the section is to be understood in its ordinary connotation that the assessee's brothers and sisters should actually have *resided or had their homes* with the assessee throughout the year, then the assessee is clearly disentitled to claim the allowance : the admitted facts are that, even during such periods of the year as were not spent in boarding school, the brothers and sisters actually resided, not with the assessee but with their parents.

But it is contended that the object of the section is to grant the allowance to a person who completely or substantially undertakes the burden of paying for the education, subsistence and other needs of a relative, or who, in other words, acts " in loco parentis " in maintaining a brother or sister. In order, however, to support this contention, Counsel was compelled to submit that the words " lived with him " are redundant and do not impose any requirement or condition additional to that which refers to the maintenance of the relative by the assessee. If the fact that a relative is entirely or substantially maintained by an assessee is, in the intention of the Legislature, sufficient by itself to found a claim for the allowance, then the reference to *living with* the assessee is not merely redundant : it actually misleads the reader into an interpretation directly in conflict with the (alleged) intention. The words of the statute clearly and unambiguously impose two independent conditions of (*a*) common residence and (*b*) maintenance, and I feel quite unable, by ignoring the first of them, to construe the statute in a sense fundamentally different from that which the words bear on their

face. It is perhaps necessary to add that on the facts of the present case we are not called upon to decide whether the section requires common residence and maintenance during the relevant year *without any interruption whatsoever*.

The requirement of common residence undoubtedly involves the denial of the benefit of the section in cases even more "meritorious" than the present one, for instance a case where an assessee bears the entire expense of the care and maintenance in some institution of an indigent and incurable relative. But the furthest extent to which a Court can be moved by such circumstances is to share with the Board of Review regret that the relief is not available, and to suggest that this matter merits consideration by the Legislature.

I would express the opinion, on the question stated, that the decision of the Board of Review was correct for the reason that the sister and brothers of the assessee did not "live" with him within the meaning of the relevant section. As this appears to be in the nature of a "test" case, I would make no order as to the costs of the proceedings in this Court.

GUNASEKARA J.—I agree.

Appeal dismissed.