

20,1957

No. 26 of 1956.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CEYLON.

UNIVERSITY OF LONDON

25 FEB 1958

INSTITUTE OF ADVANCED
LEGAL STUDIES

49870

BETWEEN

CECIL ALEXANDER SPELDEWINDE, Com-
missioner of Income Tax, Colombo *Appellant*

AND

J. L. D. PEIRIS (Executor of the Estate of the late
Mrs. N. C. PEIRIS) *Respondent.*

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Case for the Appellant.

1. This is an appeal from a Judgment of the Supreme Court of Ceylon (Gratiaen J. and Gunasekara J.) dated the 2nd March, 1956, whereby an appeal by the Appellant from a decision of the Board of Review, dated the 30th September, 1953, upon a Case Stated for the opinion of the Supreme Court by the Board under Section 74 of the Income Tax Ordinance (Cap. 188) was dismissed, and the decision of the Board was affirmed.

20 2. The matter arises upon an additional assessment to Income Tax made upon the Respondent as Executor of Mrs. N. C. Peiris who died on the 23rd October, 1951, in respect of part of her income for the year of assessment 1st April, 1950 to 31st March, 1951, being the year of assessment preceding the year in which she died. The income dealt with by the assessment was income arising to Mrs. Peiris from an agricultural business carried on by her, being a source chargeable to Income Tax under Section 6 (1) (a) of the Ordinance. It is conceded for the purposes of the appeal that the deceased did carry on such a business before her death, and that she was chargeable to Income Tax in respect of the profits arising therefrom.

30 3. The only question in dispute in the appeal is as to the basis of assessment, namely, whether the charge to Income Tax should be on the amount of the profits arising from the business in the year of assessment 1950/51 being the year of assessment preceding the year of assessment in which she died (as the Appellant contends), or whether (as the Respondent contends and the Tribunals below have decided) it should be made upon

the amount of the profits of the calendar year 1949, being the accounting period ending in the year of assessment 1949/50 upon which the statutory income of the deceased from the said business was computed for the year of assessment 1950/51 pursuant to Section 11 (2) of the Ordinance.

3. The question depends upon the construction of the provisions contained in Section 11 of the Income Tax Ordinance which prescribe the basis for computing the income from the various sources chargeable to Income Tax under Section 6 (1) of the Ordinance for each relevant year of assessment as therein particularised. These sources include profits from any trade, business, profession, or vocation, and from any employment as well as income from other sources in Heads (d) to (h) mentioned in Section 6 (1) of the Ordinance. 10

4. Section 2 of the Ordinance contains *inter alia* the following definitions—

“ ‘ business ’ includes agricultural undertaking ;

“ ‘ executor ’ means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust ;

“ ‘ year of assessment ’ means the period of twelve months commencing on the first day of April, nineteen hundred and thirty-two, or any subsequent period of twelve months commencing on the first day of April ; 20

“ ‘ year preceding a year of assessment ’ means the period of twelve months ending on the thirty-first day of March immediately prior to such year of assessment.”

The following is an extract from Section 11 of the Ordinance—

“ 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. 30

“ (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. . . . ” 40

(Subsections (3), (4) and (5) deal with cases where a person has commenced to carry on or exercise a trade, business, profession, vocation or employment.)

“ (6) 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

10 “ (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.

* * * * *

20 “ (9) 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.

“ (10) Subject as hereinafter provided, the statutory income of
 “ the executor of any deceased person from the estate of that person
 “ shall be—

“ (a) as regards the year of assessment in which the death
 “ occurs, the profits or income of the period from the date
 “ of death to the end of that year of assessment ;

“ (b) as regards the year of assessment next following that in
 “ which the death occurs, the profits or income of one
 “ year from the date of death ; and

30 “ (c) as regards any subsequent year of assessment, the profits
 “ or income of the year preceding that year of assessment :

“ Provided that—

“ (i) where the statutory income of the executor is computed
 “ on the profits or income of any period, any income of the
 “ estate proved to have been received by, distributed to,
 “ or applied to the benefit of, any beneficiary of the estate
 “ during that period (otherwise than as the capital amount,
 “ or any part of the capital amount, of his interest in the
 “ estate), shall be deducted from such profits or income ;

40 “ (ii) for the year of assessment in which the distribution to
 “ the beneficiaries of the capital amount of their several
 “ interests in the estate is completed, the statutory income
 “ of the executor from the estate shall be the profits or
 “ income of the period from the first day of April of that
 “ year to the day on which such distribution is completed ;
 “ and

“ (iii) the provisions of sub-sections (3), (4), (5) and (6) shall
 “ not apply to any executor as regards any trade or business
 “ forming part of the estate.”

Section 27 of the Ordinance reads :—

“ The executor of a deceased person shall be chargeable with the
 “ 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 this
 “ Ordinance :

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“ Provided that—

- “ (i) no proceedings shall be instituted against the executor
 “ under the provisions of Chapter XV of this Ordinance
 “ in respect of any act or default of the deceased person ;
 “ (ii) no assessment or additional assessment in respect of a
 “ period prior to the date of such person’s death shall be
 “ made after the expiry of the third year of assessment
 “ subsequent to the year of assessment in which the death
 “ occurred.”

* * * * *

Section 64 of the Ordinance provides for assessments to Income Tax 20
 being made by the Assessor, and by Section 65 the Assessor is authorised
 to make additional assessments in cases where it appears to him that a
 person chargeable with tax has been assessed at less than the proper
 amount.

Section 69 of the Ordinance provides for appeals by a person aggrieved
 by the amount of an assessment to the Commissioner of Income Tax
 and for the Commissioner in disposing of an appeal to confirm, reduce,
 increase, or annul the assessment.

Sections 70 to 74 of the Ordinance provide for appeals from the
 decision of the Commissioner of Income Tax to the Board of Review and 30
 for a further appeal to the Supreme Court against the Board of Review
 on a question of law by way of a Case Stated by the Board for the opinion
 of the Supreme Court.

The Appendix to the Ordinance sets out for the years of assessment
 commencing on 1st April, 1951, onwards descriptions of income and rates
 of tax including as headings under the former “ Taxable income of
 individuals resident in Ceylon ” and “ Taxable income of Executors.”

5. The facts of the case appear from the Case Stated by the Board
 of Review and the annexed documents.

Mrs. N. C. Peiris (hereinafter called “ the deceased ”) during her 40
 lifetime had income from an agricultural business carried on by her and
 also from dividends and other sources. She died on the 23rd October,
 1951.

The accounts of her estates or agricultural undertakings were made up to the 31st December of each year and her statutory income from that source was computed in terms of Section 11 (2) of the Ordinance on the profits for the calendar year. Prior to her death her liability for the year of assessment 1950/51 had been dealt with in the normal way and a notice of assessment (A.1) issued on the 24th January, 1951. In this assessment her income from agriculture for the year ended 31st December, 1949, amounting to Rs. 281,802 was, in terms of Section 11 (2) of the Ordinance, taken as her statutory income from this source.

- 10 In view of the death of the deceased during the year of assessment 1951/52, the Department took the usual steps of calculating the liability of the Executor (the Assessee in this case) in respect of the periods prior to the date of death (23rd October, 1951).

An additional assessment was therefore made upon the Executor for the year of assessment 1950/51; the liability being assessed in terms of Section 11 (6) (b) on the basis that on death the deceased ceased to carry on her agricultural business and that the income from this source for the year ended 31st March, 1951, had to be substituted in place of the income from agriculture for the year ended 31st December, 1949.

- 20 The result was that the amount chargeable as profits from agriculture for the year of assessment 1950/51 was finally agreed between the parties as being Rs. 675,672: this amount representing the charge in respect of an additional income of Rs. 393,870 in excess of the original assessment in respect of Rs. 281,802.

For the year of assessment 1951/52, the amount of the liability was assessed in terms of Section 11 (9) of the Income Tax Ordinance on the basis of the income from all sources for the period 1st April, 1951, to the date of the death of the deceased on 23rd October, 1951. No question arises in the appeal with regard to this assessment.

- 30 6. The Executor appealed to the Commissioner of Income Tax under Section 69 of the Ordinance against the additional assessment on the ground that the statutory income for the year of assessment 1950/51 from agriculture should be ascertained according to Section 11 (2) of the Income Tax Ordinance and not under Section 11 (6) (b), the contention being that the original assessment in an amount of Rs. 281,802 represented the true liability, and that the basis of assessment was not affected by Section 11 (6) of the Ordinance. The Commissioner of Income Tax dismissed the appeal and affirmed the additional assessment, the figures being adjusted to an agreed amount as above stated.

- 40 7. The grounds of appeal summarised were that subsection (6) of Section 11 of the Ordinance did not apply to a case where a person ceased to carry on or exercise a trade, business, profession, or employment by reason of his death, and that the legislature had made provision for death under subsection (9) of Section 11 of the Ordinance which was the only provision that applied, and that the standard rule provided by Section 11 (1) (modified by Section 11 (2)) governed the basis for computing income for the year of assessment preceding the year of assessment in which the death of a taxpayer has taken place.

The Commissioner of Income Tax in the reasons given for the determination held that the question whether a person ceased to carry on or exercise a trade, business, profession, vocation, or employment, on death could only be given a positive answer. Section 11 (9) of the Ordinance dealt only with the year of assessment in which the death took place and its object was to apply the current year principle for that year to the income from all sources.

8. The Executor appealed to the Board of Review under Sections 71 and 73 of the Ordinance, the contentions in support of the appeal (set out in paragraphs 5 and 6 of the Case) summarised, were that Section 11 (6) of the Ordinance was not applicable in connection with death and applied only in the case of a living person, and that the only provision which applied in the case of death was Section 11 (9). 10

It was contended on behalf of the Assessee (*inter alia*) that death involved the cessation of business and therefore Section 11 (6) of the Ordinance applied to the case, and that Section 11 (9) had reference only to the year of assessment in which the death took place.

The Board of Review allowed the appeal of the Executor. Their decision is stated in the following terms :—

“ Mrs. N. C. Peiris died on 23rd October, 1951. The question at present arises with regard to her assessment for the year from 1.4.50 to 31.3.51. The Commissioner has assessed her under Section 11 (6) (b). Counsel for Mrs. N. C. Peiris urges that Section 11 (6) (b) would not apply as it applies only to the cessation of business by a living person. He urges that Mrs. N. C. Peiris should have been assessed under Section 11 (2). We agree with that contention. 20

“ We therefore allow the appeal.”

9. On the application of the Appellant, the Commissioner of Income Tax, the Board of Review stated a case for the opinion of the Supreme Court on a question of law under Section 74 of the Ordinance. In paragraph 10 of the Case the Board stated the questions of law arising as follows :— 30

“ (10) The question of law that arises in this case is :—

“ On the facts as admitted between the parties did Mrs. N. C. Peiris, upon her death on 23.10.1951 cease to carry on or exercise a trade or business, profession or vocation, in Ceylon within the meaning of Section 11 (6) of the Income Tax Ordinance (Cap. 188) ? If so, does paragraph (b) of Section 11 (6) of the said Ordinance apply for the purpose of computing the statutory income of Mrs. Peiris for the year of assessment preceding that in which she died ? ” 40

10. The Case so stated by the Board of Review came on for hearing in the Supreme Court before Mr. Justice Gratiaen and Mr. Justice Gunasekara on the 20th February, 1956, and the decision of the Court was given on the 2nd March, 1956, answering the questions of law in the negative and in favour of the Respondent, the Executor of the deceased.

Mr. Justice Gratiaen in his judgment (in which Mr. Justice Gunasekara concurred) considered that Section 11 (9) provided a comprehensive exception to the general scheme for ascertaining a deceased person's statutory income, and, apart from the special provision in respect of the year of assessment in which the death occurred, the income (from whatsoever source) of all preceding years must be computed under the general Section 11 (1). He agreed with the Board of Review that Section 11 (6) was 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
 10 or vocation. Section 11 (6) appeared to him 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. If it were conceded that Section 11 (6) *prima facie* covered a case of cessation by death, even on that assumption Section 11 (9) was clearly an exception to paragraph (a) of Section 11 (6) because it provides for a special computation of the deceased's entire income during that year of assessment, and not merely of his income from one particular source. If, therefore, paragraph (a) of Section 11 (6) did not apply in respect of the year in which the death
 20 occurred, paragraph (b) of Section 11 (6) must also be ruled out as far as the preceding year is concerned.

11. The Appellant humbly submits that the judgment of the Supreme Court is wrong and should be reversed, that the questions of law submitted to the Court ought to have been answered in the affirmative and in favour of the present Appellant and that this appeal should be allowed with costs for the following amongst other

REASONS

- 30 (1) BECAUSE the additional assessment to Income Tax was rightly made under Sections 11 (6) (b) and 27 of the Ordinance in respect of the profits from the agricultural business of the deceased of the year of assessment 1950/1951.
- (2) BECAUSE the deceased having died on the 23rd October, 1951, in the year of assessment 1951/52 ceased on that day in that year of assessment to carry on or exercise that agricultural business within the meaning of Sub-section (6) of Section 11 of the Ordinance.
- 40 (3) BECAUSE it is not in dispute that the amount of the profits from the deceased's agricultural business of the year of assessment 1950/51 were greater than the amount of those profits, as computed in accordance with subsections (1) and (2) of Section 11, with reference to the period of twelve months ending on the 31st December, 1949, and in respect of which said amount she had been charged in the original assessment made upon her in her lifetime.
- (4) BECAUSE it became the duty of the Assessor, as the deceased had ceased to carry on or exercise her said

agricultural business, to make an additional assessment upon her executor, who became liable under Section 27 of the Ordinance, for the said year of assessment 1950/51 in respect of the amount of the profits of the business of that year.

- (5) BECAUSE upon a natural and a clear construction of subsection (6) of Section 11 of the Ordinance the deceased ceased to carry on or exercise her said business on the date of her death and that date was the date on which the cessation occurred within the meaning of the subsection. 10
- (6) BECAUSE the provision in subsection (9) of Section 11 of the Ordinance, dealing as it does with the income from all the sources of income charged under Section 6 (1) of the Ordinance of a person dying in a year of assessment and affecting only the liability in respect of the period from the beginning of the year of assessment to the date of death does not require that the otherwise clear meaning of the wording of subsection (6) of Section 11 should be restricted so as to exclude the case of a person ceasing to carry on business by reason of his death. 20
- (7) BECAUSE the said subsection (9) of Section 11 dealing as in terms it does only with the liability of a taxpayer in respect of the period between the beginning of the year of assessment in which he has died and the date of his death ought not to be construed as rendering abortive the direction in subsection (6) (b) of Section 11 as to the liability in respect of the year of assessment preceding that period.
- (8) BECAUSE subsections (1), (9) and (10) of Section 11 of the Ordinance deal with income from all sources, 30 and the provisions dealing with the statutory income from a business are to be found in subsections (2) to (6) of Section 11.

JOHN SENTER.

REGINALD HILLS.

In the Privy Council.

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Case for the Appellant.

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