

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

BETWEEN

CECIL ALEXANDER SPELDEWINDE (Commissioner
of Income Tax, Colombo) *Appellant*

49869

AND

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

Case for the Respondent

RECORD.

1. This is an appeal brought by leave from a judgment of the Supreme Court of Ceylon (Gratiaen, J. and Gunasekara, J.) pronounced on the 28th March, 1956, dismissing an appeal by the Appellant against a determination of the Board of Review constituted under section 70 (1) of the Income Tax Ordinance, whereby it was held that the income tax assessment on the Respondent in respect of the year from 1st April, 1950, to 31st March, 1951, should be computed under the provisions of section 11 (2) and not under those of section 11 (6) (b) of the Ordinance.

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2. Income tax is imposed in Ceylon by the Income Tax Ordinance of 1932 as amended by later Ordinances and Acts.

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Section 5 of the said Ordinance imposes a charge to Income Tax for the year of assessment commencing on the 1st April, 1932, and for each subsequent year of assessment, in respect of the profits and income of every person for the year preceding the year of assessment, subject, however, to other provisions of the Ordinance enacting that tax is to be charged in particular cases in respect of the profits or income of some other period.

30 Section 11 of the said Ordinance provides, by subsection (1) thereof, that the statutory income of every person for each year of assessment from each source of his profits and income subject to tax shall be the full amount of the said profits or income arising from such source during the year preceding the year of assessment, notwithstanding that he may have ceased to possess such source.

Subsection (6) of the said section 11 provides that where a person ceases to carry on or exercise a trade etc. in Ceylon his statutory income

therefrom for the year of assessment in which the cessation occurs shall be the amount of the profits of the period beginning on the 1st April in that year and ending on the date of cessation. For the year of assessment preceding that in which the cessation occurs, the trader's statutory income from his trade is to be computed *either* in accordance with the general rule contained in section 11 (1) and referred to above, *or* by reference to the actual profits of such year of assessment, whichever shall result in the higher figure.

Subsection (9) of the said section provides that where a person dies within a year of assessment his statutory income from all sources for that 10 year is to be the amount of the profits and income of the period beginning on the 1st April in that year and ending on the day of his death.

Section 27 makes the executor of a deceased person chargeable with the tax which could have been charged on the deceased if he were alive.

The relevant statutory provisions are as follows :—

“ 5. (1) Income tax shall, subject to the provisions of this
 “ Ordinance and notwithstanding anything contained in any other
 “ written law or in any convention, grant, or agreement, be charged
 “ at the rate or rates specified hereinafter or fixed by resolution
 “ under section 20A, for the year of assessment commencing on the 20
 “ first day of April nineteen hundred and thirty-two, and for each
 “ subsequent year of assessment in respect of the profits and income
 “ of every person for the year preceding the year of assessment—

“ (a) wherever arising, in the case of a person resident in
 “ Ceylon, and

“ (b) arising in or derived from Ceylon, in the case of every
 “ other person,

“ but without prejudice to any provisions of this Ordinance which
 “ enact that tax is to be charged in particular cases in respect of the
 “ profits and income of a period other than the year preceding the 30
 “ year of assessment.”

“ 6. (1) For the purpose of this Ordinance, ‘ profits and
 “ ‘ income ’ or ‘ profits ’ or ‘ income ’ means—

“ (a) the profits from any trade, business, profession, or
 “ vocation for however short a period carried on or
 “ exercised ;

* * * * *

“ 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 40
 “ 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.

* * * * *

“ (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 sub-
 “ sections, 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 assess-
 “ ment, 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.

* * * * *

“ 27. 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 :

“ Provided that—

30 “ (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 ; and

“ (iii) the liability of an executor under this section shall be
 “ limited to the sum of—

40 “ (a) the deceased person’s estate in his possession or
 “ control at the date when notice is given to him that
 “ liability to tax will arise under this section, and

“ (b) any part of the estate which may have passed to a
 “ beneficiary.”

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3. This appeal is concerned with the application of section 11 of the Ordinance to the computation of the assessable profits for the year of assessment from 1st April, 1950, to 31st March, 1951, of Mrs. Nancy Charlotte Peiris who died on the 23rd October, 1951. The facts of the case appear from the Case Stated by the Board of Review under the provisions of section 74 of the Income Tax Ordinance and are summarised below :—

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(i) The Respondent is the executor of the late Mrs. Nancy Charlotte Peiris who was in receipt of income *inter alia* from agriculture and who died on the 23rd October, 1951. Prior to her death, Mrs. Peiris was assessed for the year of assessment 1950/51 10 on the normal "preceding year" basis under section 11 (2) of the Ordinance, that is to say on her total income and profits for the year ended 31st December, 1949.

(ii) Following the death of Mrs. Peiris during the year of assessment 1951/52 the Commissioner recalculated the liability of her executor (the Respondent in the present case) in respect of the periods prior to the date of death as follows :—

(A) Year of assessment 1951/52 : liability for this year was re-assessed as provided for by section 11 (9) of the Ordinance on the basis of the income of the deceased for the period 1st April, 20 1951, to 23rd October, 1951. It is common ground between the parties to this appeal that that revision was well-founded and was made upon the basis for which the Ordinance provides.

(B) Year of assessment 1950/51 : liability for this year was re-assessed upon the basis that upon and by reason of her death the deceased ceased to carry on her agricultural business and that accordingly in computing her taxable income from this source the profits of the year ended 31st March, 1951, were to be taken into account in place of the profits for the year ended 31st December, 1949. 30

4. The Respondent appealed to the Commissioner of Income Tax against the assessment for the year of assessment 1950/51 upon the ground that the statutory income from agriculture for that year fell to be ascertained according to the provisions of section 11 (2) of the Ordinance and not according to those of section 11 (6) (b).

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5. The Commissioner of Income Tax heard the appeal in accordance with the provisions of section 69 of the Ordinance and dismissed the appeal of the Respondent. A copy of the determination and reasons of the Commissioner appears in the Record of Proceedings at page 12.

6. The Respondent thereupon appealed to the Board of Review 40 under the provisions of section 71 of the Ordinance upon the grounds, shortly stated, that—

(A) the assessment had been made on the footing that section 11 (6) (b) of the Ordinance was applicable by reason only

of the fact that Mrs. Peiris had died. In relation to that section to die was not to cease to carry on business, since cessation in that context connoted a voluntary act of the assessee ;

(B) section 11, read in its entirety, showed that section 11 (6) (b) applied only to a living person who ceased to carry on business or employment ;

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(C) the absence from section 11 (9) of the Ordinance (which prescribes the basis of assessment in respect of the year of assessment in which an assessee dies) of any provision for the readjustment of the assessment in respect of the year preceding that in which death occurs supports the construction of section 11 (6) (b) placed upon it by the Respondent ;

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(D) the provisions of section 11 (9) relating to the year of assessment in which an individual dies apply the " current year " basis of assessment to the whole of the deceased's income from all sources. The provisions of section 11 (6) (b) however, in relation to the year of assessment preceding that in which cessation of trade occurs, apply only to the computation of income arising from trade etc. It would be anomalous if the death of the assessee in the year following the year of assessment concerned were to have the effect of causing his income from one source (i.e. trade) to be computed on a different basis from that which applied to his income from all other sources. This consideration assists the conclusion that the construction placed upon section 11 (6) (b) by the Respondent is correct.

7. It was contended on behalf of the Assessor as follows :—

(A) Death involved the cessation of business and accordingly the provisions of section 11 (6) applied to the present case.

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(B) The provisions of section 11 (9) have reference only to the year of assessment in which death takes place.

(C) Had it been intended that the provisions of section 11 (6) (b) were to be excluded by those of section 11 (9) the Ordinance would have made some provision to that effect upon lines similar to those of proviso (iii) of section 11 (10).

8. The Board of Review allowed the appeal of the Respondent and a copy of their decision appears in the Record of Proceedings at page 15. p. 15.

9. Being dissatisfied with the decision of the Board of Review the Commissioner required the said Board to state a Case on a question of law for the Opinion of the Supreme Court of Ceylon. A case was p. 1.
40 accordingly stated in relation to the following question : " On the facts as admitted between the parties did Mrs. N. C. Peiris, upon her death on 23rd October, 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 ? "

p. 17. 10. The case came on for hearing in the Supreme Court of Ceylon (Gratiaen, J., and Gunasekara, J.) on the 20th February, 1956, and on the 2nd March, 1956, the Court delivered judgment answering the question of law in favour of the Respondent and awarding him costs.

p. 15. Gratiaen, J., began his judgment by stating that it was common ground between the Taxing Authority and the Respondent that the statutory income of Mrs. Nancy Charlotte Peiris ("the Deceased") for the year of assessment in which she died, in respect of all her sources of income, must be computed under section 11 (9) of the Ordinance. It was similarly common ground that the Deceased's income from sources other than her agricultural business must be computed under section 11 (1). As regards the ascertainment of her statutory income from the agricultural business there was however disagreement, the Assistant Commissioner having decided that that income must be computed under paragraph (b) of section 11 (6) because the Deceased had "ceased" by reason of her death to carry on that business, while the Board of Review had ruled in favour of the Respondent that section 11 (6) (b) applied only to "a cessation of business by a living person." Gratiaen, J., then read the question of law submitted for the Opinion of the Court and the relevant provisions of the Ordinance appearing in sections 5 (1), 11 (1), 11 (6) and 11 (9). 20

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The general rule appearing from section 5 (1) was that tax was imposed for each year of assessment in respect of the profits and income of the preceding year. Section 11 (1) dealing with the ascertainment of statutory income for any particular year was to the same effect. Unless, therefore, any special exceptions in other parts of section 11 were found to be applicable to the facts of the present case, the Deceased's statutory income (including that derived from agriculture) for the year 1951/52 would be the aggregate of her net income from all these sources during 1950/51. Similarly her statutory income from all sources for 1950/51 would be the aggregate of her net income during 1949/50. 30

Section 11 (6) introduced a limited exception to the general scheme of taxation in that, when a person "ceased" to carry on or exercise a trade, etc., two consequences followed. His statutory income from that particular source, both for the year of assessment in which the cessation occurred and for the preceding year, must be computed as prescribed in section 11 (6). It was to be observed, however, that for each of those years the assessee's statutory income from other sources continued to be computed in accordance with the provisions of section 11 (1). Moreover it was clear that, where a cessation occurred, section 11 (6) was intended to be brought into operation simultaneously in respect of both years of assessment; it was not permissible to apply the exception in respect of one year but not of the other. Paragraphs (a) and (b) of section 11 (6) were interconnected parts of a single proviso and not separate and distinct exceptions. 40

Another exception to the general rule was introduced by section 11 (9) which provided that the whole of the statutory income of an individual for the year of his death should be computed not under section 11 (1) but by reference to the actual aggregate of income and profits accruing up to the date of his death. The statutory income of the Deceased for 1951/52 was therefore properly computed under section 11 (9) and not under either section 11 (1) or section 11 (6) (a). 50

Section 11 (9) made no special provision for the computation of the Deceased's statutory income for the year of assessment preceding the year in which his death occurred. Unless, therefore, section 11 (6) could properly be applied in part only to such a state of facts, the assessment fell to be made in accordance with the general scheme of computation laid down by section 11 (1).

Gratiaen, J. referred to the observations of Rowlatt, J. in *Hunter v. Dewhurst* that a person "cannot vacate an office better than by dying in it" and to the decision in *Allen v. Trehearne*. In the context of certain Taxing Statutes the words "where a person ceases to hold an office" might be sufficiently general to cover cessation by death as well as by resignation or dismissal. The problem, however, was not to be solved merely by ascertaining all the possible meanings of particular words appearing in a Taxing Statute; those words must be construed in the context of the whole scheme prescribed in the enactment.

In the opinion of Gratiaen, J., the exception to the general scheme which section 11 (9) provided was comprehensive as regards the ascertainment of a deceased person's statutory income. Apart from the special provision in respect of the year of assessment in which death occurred, and for which that section provided, the income from all sources of all preceding years must be computed in accordance with the general rule laid down in section 11 (1).

Even if the provisions of section 11 (6) *prima facie* covered a case of cessation by death, section 11 (9) was clearly an exception to paragraph (a) of section 11 (6). If therefore that paragraph did not apply in respect of the year in which the death occurred, it followed that paragraph (b) of that section must also be excluded so far as the year 1950-51 was concerned in the present case.

Under section 5 (1), the general charging section, tax was payable in respect of the Deceased's profit and income for the year preceding the year of assessment and her statutory income was to be computed under section 11 (1) unless some clear provision to the contrary could be found. Gratiaen, J., accordingly answered the question of law submitted for the Opinion of the Court in favour of the Respondent.

Gunasekara, J., agreed.

11. By a decree dated 18th June, 1956, the Supreme Court of Ceylon granted conditional leave to the Appellant to appeal to Her Majesty in Council from the Judgment of that Court and by further decree dated 24th July, 1956, granted final leave to appeal.

12. The Respondent humbly submits that the decision of the Supreme Court of Ceylon is right and should be affirmed and that this appeal should be dismissed with costs both here and below for the following among other

REASONS

- (1) BECAUSE section 11 (1) of the Ordinance provides that the statutory income of the Deceased for each year of assessment is to be the full amount of the profits derived

by her from agriculture during the year preceding the year of assessment unless some contrary provision appears in some other part of the section.

- (2) BECAUSE the only variation of the general rule appearing in section 11 (1) is that provided by subsection (9) which applied only to the computation of income for the year in which death takes place.
- (3) BECAUSE in a case of cessation of trade section 11 (6) provides by sub-paragraphs (a) and (b) for a special basis of computation both in respect of the year of 10 cessation and in respect of the previous year. In the case of a trader who dies the provisions of section 11 (9) override those of section 11 (6) (b) and in the absence of express provision to the contrary it must be assumed that the provisions of section 11 (6) (a) are not applicable.
- (4) BECAUSE the words " ceases to carry on or exercise a trade, business, profession, vocation or employment " in Ceylon must be interpreted according to the context in which they appear, and in that context are not apt to apply to the state of affairs arising out of the death 20 of a trader.
- (5) BECAUSE the reasoning in the judgment of Gratiaen, J., is well founded.

ROY BORNEMAN.

H. MAJOR ALLEN.

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Appellant

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Respondent

Case for the Respondent

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