

20, 1957

Supreme Court of Ceylon  
No. 27 (Final) of 1954

Case stated for the opinion of the  
Supreme Court under the Income  
Tax Ordinance

26 1956

IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON

BETWEEN

CECIL ALEXANDER SPELDEWINDE,  
Commissioner of Income Tax, Colombo ..... *Appellant*

AND

J. L. D. PEIRIS,  
(Executor of the estate of the late Mrs. N. C.  
Peiris) of 33, Chapel Street, Off Union Place,  
Colombo ..... *Respondent*

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RECORD  
OF PROCEEDINGS

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
25 FEB 1958  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

49868

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No. 1

Case Stated for the opinion of the Supreme Court

No. 1  
Case stated for  
the opinion of  
the Supreme  
Court.  
8.1.54

CASE STATED—For the opinion of the Honourable the Supreme Court under the provisions of Section 74 of the Income Tax Ordinance (Cap. 188) upon the application of—

The Commissioner of Income Tax.....*Appellant.*

The facts of the case are as follows :—

10 (1) The late Mrs. Nancy Charlotte Peiris who had income from Agriculture and dividends died on October 23, 1951. Prior to her death, she was assessed for the year of assessment 1950/51 on the normal preceding year basis under Section 11 (2) viz. on the income for the year ended December 31, 1949, amounting to Rs. 281,802 from Agriculture.

(2) In view of Mrs. Peiris' death during the year of assessment 1951/52 the Department took the usual steps of calculating the liability of the Executors (the Assesseees in this case) in respect of the periods prior to the date of death (October 23, 1951) as follows :—

20 (a) *Year of Assessment 1950/51* : The liability was 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 March 31, 1951, had to be substituted in place of the income from agriculture for the year ended December 31, 1949.

(b) *Year of Assessment 1951/52* : 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 April 1, 1951, to October 23, 1951.

30 (3) Thereupon the Assesseees (the executors of Mrs. N. C. Peiris) appealed to the Commissioner of Income Tax against the assessment on the ground that the statutory income for the year of assessment

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1950/51 from Agriculture should be ascertained according to Section 11 (2) of the Income Tax Ordinance and not under Section 11 (6) (b).

(4) The Commissioner of Income Tax heard the appeal and dismissed the appeal of the Assesseees. The copy of the Determination and Reasons of the Commissioner of Income Tax are annexed hereto as part of the case marked X1.

(5) The Assesseees thereupon appealed to the Board of Review constituted under the Income Tax Ordinance on the following grounds :—

- (a) The assessment appealed against has been made on the basis that Section 11 (6) (b) of the Income Tax Ordinance is applicable in determining the statutory income for the year of assessment 1950/51 for the reason that when a person dies he is said to have ceased to carry on business within the intent and meaning of the said section. It is submitted that this interpretation of the words "ceased to carry on business" is wrong ;
- (b) Cessation connotes a voluntary act and a person who dies cannot be said to have "ceased" to carry on business within the meaning of this section ;
- (c) Section 11 read in its entirety shows that Section 11 (6) (b) applies only to a person who while alive ceases to carry on business or employment ;
- (d) Section 11 (9) of the Income Tax Ordinance prescribes the basis of assessment of the statutory income of a person in respect of the year of assessment in which he dies. The absence of any provision for the re-adjustment of the assessment in respect of the year of assessment preceding that in which death occurs supports the appellant's contention ;
- (e) To apply 6 (b) in such circumstances is to introduce an anomaly into the Ordinance in that section 11 (9) applies the current year basis to *all* income from *all* sources but when the Department applies Section 11 (6) (b) to the assessment for the year of assessment preceding that in which the cessation occurs the re-assessment is made applicable only to the income from any trade business profession vocation or employment in Ceylon and *not* to other sources of income. There can be no reason or principle to support the difference in treatment operating on some classes of income as a result of introducing

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Section 11 (6) (b) in the case of death. This anomaly demonstrates that Section 11 (6) (b) was not at all intended to apply to a case of death and that only the assessment for the year of assessment in which the death occurs was intended to be recast ;

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(f) The provisions of the Finance Acts of England are not a guide in the interpretation or application of the provisions of the Ceylon Income Tax Ordinance.

10 (6) At the hearing of the appeal by the Board of Review, the Counsel for the Assesseees contended inter alia as follows :—

(a) Section 11 (6) is not applicable in connection with death. It applies only in the case of a living person ; cessation must be an act of volition.

(b) The only Section that applies in the case of death is Section 11 (9).

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

(a) Death involved the cessation of business and therefore Section 11 (6) applied to this case.

20 (b) Section 11 (9) has reference only to the year of Assessment in which the death took place.

(c) If it was intended that Section 11 (6) (b) is to be excluded by Section 11 (9) there would have been some provision similar to proviso (iii) of Section 11 (10).

(8) The Board of Review allowed the appeal of the Assesseees. A copy of the decision of the Board of Review is attached hereto as part of the case marked X2.

30 (9) Dissatisfied with the decision of the Board of Review, the appellant (Commissioner of Income Tax) has by his letter dated 30th October, 1953, marked X3 applied to the Board of Review to have a case stated for the opinion of the Honourable the Supreme Court on the questions of law arising in the case and this case is stated accordingly.

(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

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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 ? ”

(11) Copies of documents marked A1—A2 and documents X1—X3 are annexed as part of this case.

(12) The amount of tax in dispute is Rs. 175,956/66.

Colombo, January 8, 1954.

1. (Sgd.) E. A. L. WIJEYWARDENE
2. (Sgd.) HERMAN S. CHRISTOFFELSZ
3. (Sgd.) E. W. KANNANGARA

10

Members of the Board of Review,  
Income Tax.



## Copy A 1

File No. 54/763  
Charge No. HB 2213

## CEYLON INCOME TAX

Form No. 10  
(N 4\*) 1/52 (Inst.)

No. 1.  
Case stated for  
the opinion of  
the Supreme  
Court.  
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## Notice of Assessment for the Income Tax Year ending March 31, 1951

R.I. NA. A

To : J. L. D. Peiris Esq. (as attorney for Mrs. N. C. Peiris,  
33, Staples Street, off Union Place, Colombo 2.

TAKE notice that the Assessor, Unit 6, has assessed your income as follows :—

Source of Income		Amount assessed Rs.
A.—Profits from Agriculture	.. .. .	281,802
B.—Profits from Employment	.. .. .	—
C.—Profits from Trades, Professions, &c.	.. .. .	—
D.—Interest from sources in Ceylon	.. .. .	35,028
E.—Dividends from Ceylon Companies	.. .. .	6,939
F.—Interest, &c., from the United Kingdom and India	.. .. .	—
G.—Foreign Income	.. .. .	—
H.—Annual value of Residence owned	.. .. .	2,896
I.—Rents of Properties	.. .. .	22,677
K.—Other profits and income	.. .. .	—
Less Interest, &c., paid	.. .. .	—
Losses	.. .. .	—
Total		349,342

## Allowances :—

Earned Income	Personal	Wife	Children	Dependent Relatives	Total
4,000	2,000				6,000
Taxable Income					343,342

## TAX PAYABLE—

Taxable Income	Rate	Tax
Rs.		Rs. c.
6,000	at 9 per cent.	540 0
10,000	at 19 per cent.	1,900 0
20,000	at 22 per cent.	4,400 0
50,000	at 39 per cent.	19,500 0
100,000	at 60 per cent.	60,000 0
157,342	at 66 per cent.	103,845 72
		190,185 72

## Less Allowance for—

Tax paid at source	Relief section 44(A)	Relief section 45(2)	Relief—sec. 46 Tax Credit(UK)	Relief— section 46 (A)	Total
1,734. 86					1,734 86
Payable					188,450 86

The above amount falls due for payment on or before 24 March, 1951. If, however, a sum of Rs. 94,225. 43 is paid on or before that date, payment of the balance will be accepted on or before 26 May, 1951, without the addition of any penalty.

Date of Notice . 24 Jan., 1951

INCOME TAX OFFICE,  
COLOMBO 3.

(Sgd.) C. VAN LANGENBERG,  
Assistant Commissioner, Unit 6

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**PAYING-IN SLIP****Ceylon Income Tax Year to March 31, 19**

To THE COMMISSIONER OF INCOME TAX (BRANCH C), INCOME TAX OFFICE, COLOMBO 3.

Charge No. .... First instalment of Tax Rs. .... Due on .....

File No. .... Second Instalment of Tax Rs. .... Due on .....

Name : ..... Address : .....

Please see notes overleaf

*N.B.*—If the receipt is to be sent to an address other than the one given above it should be inserted below.

Address : .....

**NOTES**

1. **Re Appeal.**—If you object to the Assessment overleaf, you must give notice of appeal in writing **within 21 days** of the date of the Notice of Assessment, stating the grounds of objection.

2. A notice of appeal, if made after 21 days, will not be accepted unless absence from Ceylon, sickness or other reasonable cause prevented such appeal being made within 21 days.

3. All letters of appeal should be marked "Appeal-File No. ...." and addressed to the Commissioner of Income Tax. This will ensure that the letter of appeal reaches the correct Unit without delay.

**II. Re Payment.**—It is not obligatory on the Department to issue a reminder before the tax falls due to be paid. In default of payment of either of the instalments indicated overleaf by the due dates, you are liable to have proceedings taken against you for recovery of the full tax outstanding together with a penalty not exceeding 20 per cent. of that amount.

2. Kindly detach one of the annexed Paying-in Slips and forward with each of your remittances to—  
The Commissioner of Income Tax (Branch C).

Failure to do so will result in delay in your receiving an acknowledgment for your payment.

3. All correspondence regarding payments should be similarly addressed. Kindly also note to indicate the relevant Charge Number in all such correspondence.

4. Please note that, in accordance with Section 76 (2) of the Income Tax Ordinance, the tax should be paid notwithstanding any notice of appeal unless the Commissioner has ordered that payment in part or full may be held over.

**III. Re Assessment.**—



## NOTES

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Re **Appeal**—If you object to the Assessment overleaf, you must give notice of appeal in writing **within 21 days** of the date of the Notice of Assessment, stating the grounds of objection.

2. A notice of appeal, if made after 21 days, will not be accepted unless absence from Ceylon, sickness or other reasonable cause prevented such appeal being made within 21 days.

3. All letters of appeal should be marked “ Appeal—File No. .... ” and addressed to the Commissioner of Income Tax. This will ensure that the letter of appeal reaches the correct Unit without delay.

Re **Payment**—It is not obligatory on the Department to issue a reminder before the tax falls due to be paid. In default of payment of the tax by the due date, you are liable to have proceedings taken against you for recovery of the full tax outstanding together with a penalty not exceeding 20 per cent. of that amount.

2. Kindly detach the annexed Paying-in Slip and forward with your remittance to—  
The Commissioner of Income Tax (Branch C).

Failure to do so will result in delay in your receiving an acknowledgment for your payment.

3. All correspondence regarding payments should be similarly addressed. Kindly also note to indicate the relevant Charge Number in all such correspondence.

4. Please note that in accordance with Section 76 (2) of the Income Tax Ordinance, the tax should be paid notwithstanding any notice of appeal unless the Commissioner has ordered that payment in part or full may be held over.

Re **Assessment**—

**Determination and Reasons under Section 71(2) of the Income  
Tax Ordinance**

*Ceylon Income Tax Appeal of Mr. J. L. D. Peiris, the Executor of the  
Estate of the late Mrs. N. C. Peiris, against an additional  
assessment for the year of assessment 1950/51, heard by  
the Commissioner of Income Tax on 28th July, 1953*

Present for the Appellant : Mr. N. K. Choksy, Q.C.,

10

Mr. P. Navaratnarajah, Advocate, instructed by

Mr. V. G. Cooke, of Messrs. F. J. & G. de Saram, Proctors,

Mr. J. L. D. Peiris, Executor of the Estate of Mrs. N. C. Peiris, deceased.

Supporting the assessment : Mr. S. A. Jayawardene, Assessor

Amount of Assessment :	Original	Rs. 349,342	
	Additional	Rs. 266,601	
		—————	Rs. 615,943. 0
Tax payable	Original	Rs. 188,450.86	
	Additional	Rs. 175,956.66	
		—————	Rs. 364,407.52
Amount of tax in dispute :			Rs. 175,956.66

20

*Grounds of Appeal* :—The statutory income of 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).

30

*Facts* :—(1) The late Mrs. N. C. Peiris, whose chief source of income was Agriculture, 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) on the profits for the calendar year.

(2) Prior to her death her liability for the year of assessment 1950/51 had been dealt with in the usual way and a notice of assessment (A1) issued on the 24th January 1951. In this assessment

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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 Income Tax Ordinance, taken as her statutory income from this source.

(3) In view of Mrs. Peiris' death during the year of assessment 1951/52 the Department took the usual steps of calculating the liability of the Executor in respect of periods prior to the date of death (23rd October, 1951). This was done as follows :—

(i) *Year of Assessment 1951/52*

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 23rd October, 1951. 10

(ii) *Year of Assessment 1950/51*

Liability was re-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 for the corresponding income for the year ended 31st December, 1949. The notice of assessment (A2) dated 10th November, 1952, was accordingly issued on this basis. The additional income of Rs. 266,601 from Agriculture was arrived at as follows :— 20

	<i>Rs.</i>
Income from Agriculture for the year 1st April, 1950, to 31st March, 1951 .. .. .	548,403
<i>Less</i> : Amount previously assessed in original assessment (A1) .. .. .	281,802
	266,601
Additional Income ..	266,601

(4) At the hearing it was agreed that the figure of income from Agriculture for the year 1st April, 1950, to 31st March, 1951, was in fact Rs. 676,843 and not Rs. 548,403 and that the amount of income to be taxed additionally was not Rs. 266,601 but Rs. 393,870 arrived at as follows :— 30

	<i>Rs.</i>
Income from Agriculture for the year 1st April, 1950, to 31st March, 1951 .. .. .	675,672
<i>Less</i> : Amount previously assessed in original assessment (A1) .. .. .	281,802
	393,870
Additional income ..	393,870

(5) In the circumstances it was further agreed that—

(i) if Section 11 (6) (b) had been correctly applied in the assessment under appeal the additional income should be increased from Rs. 266,601 to Rs. 393,870 ;

(ii) if it was not correct to apply Section 11 (6) (b), the additional assessment appealed against should be discharged.

10 (6) The figures being agreed upon the only issue in appeal was whether Section 11 (6) (b) could be applied in arriving at the statutory income of a deceased person in respect of the year of assessment preceding the year in which the death took place.

*Arguments for the Appellant :—*

In arriving at statutory income for any year of assessment the standard rule provided for in Section 11 (1), modified by Section 1 (2) where the accounting year ends on some day other than the 31st day of March, should be applied unless the special provisions of any of the other sub-sections are applicable.

20 Section 11 (6) is not applicable in connection with death. The word “ ceases ” is in contra-distinction to “ commences ”. Cessation there connotes a voluntary act—a determination by the assessee to cease the activity.

The last clause of Section 11 (6)—“ 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 ” shows that it applies only where the assessee continues to be alive and that when death comes in the Section is not applicable.

30 The Legislature has made provision for death in Section 11 (9) and that is the only section that applies. That is the only section that could be said to over-ride Section 11 (1) on the death of an assessee.

*Arguments of the Assessor :—*

Cessation need not necessarily involve a choice. Cessation can take place by dismissal from office, interruption by war, bankruptcy and also by death.

In *Hunter v. Dewhurst*, 16 T. C., 615, Rowlatt, J., said “ you cannot vacate an office better than by dying in it. ”

40 Section 11 (9) has reference only to the year of assessment in which the death takes place. We are dealing with the year preceding the year in which the death took place and Section 11 (6) (b) must be applied. If it was intended that this section was to be excluded there would have been some provision similar to proviso (iii) to Section 11 (10).

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*Determination :—*

The appeal is dismissed and on the basis of the figures of income agreed on at the hearing, the assessment will be revised by the substitution of Rs. 393,870 for the figure of Rs. 266,601 at which the additional income from Agriculture was assessed.

*Reasons for the determination :—*

The only issue in this appeal is whether the application of Section 11 (6) (b) to the late Mrs. N. C. Peiris' income from Agriculture in arriving at her statutory income for the year of assessment prior to the year in which she died is correct.

10

This section has been applied on the basis that the late Mrs. N. C. Peiris ceased to carry on her agricultural business when she died on the 23rd October, 1951.

This method of assessment of an individual in respect of the year preceding the year of her death has been followed by the Department since its inception. The practice is referred to in paragraph 390 of the Income Tax Manual which reads as follows :—

“ *Basis of assessment—death during year* :—Where the deceased person carried on a trade, business, profession, or employment the provisions of Section 11 (6) will apply as regards the year preceding that in which the death occurs.”

20

The legality of this practice is questioned in this appeal and has therefore to be examined independently of any opinion expressed in the Manual.

It is agreed on both sides that in arriving at statutory income the rule provided by Section 11 (1), modified by Section 11 (2) where the accounting year ends on some day other than the 31st day of March, should be followed unless the special provisions of any of the other sub-sections are applicable. Do the facts of this case come within any of the other sub-sections ?

30

The simple question is—Does a person cease to carry on or exercise a trade, business, profession, vocation or employment on death? With all respect to the very able argument of Mr. Choksy, Q.C., I cannot but give a positive answer to the question and hold that he does. The words of Rowlatt, J., “ You cannot vacate an office better than by dying in it ” (*vide Hunter v. Dewhurst*, 16 T. C., 615, at page 623) could well apply to all other sources of income mentioned in this sub-section.

It is interesting to compare the provision in the United Kingdom corresponding to Section 11 (6) of our Ordinance. It is found in Section 31 of the Finance Act, 1926, which reads as follows :—

40

“ *Provisions as to discontinuance of trades etc.*



(1) Where in any year of assessment a trade, profession or vocation is permanently discontinued, then, notwithstanding anything in this Part of this Act—

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10 (a) the person charged or chargeable with tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the sixth day of April, in that year and ending on the date of the discontinuance, subject to any deduction or set-off to which he may be entitled under the section of this Part of this Act which provides for relief in respect of certain losses or under Rule 13 of the Rules applicable to Cases I and II of Schedule D, and, if he has been charged otherwise than in accordance with this provision, any tax overpaid shall be re-paid, or an additional assessment may be made upon him, as the case may require ;

20 “ (b) If the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs exceed the amount on which the person has been charged for that preceding year, or would have been charged if no such deduction or set-off as aforesaid had been allowed, an additional assessment may be made upon him, so that he shall be charged for that preceding year on the amount of the profits or gains of the said year ending on the fifth day of April, subject to any such deduction or set-off as aforesaid to which he may be entitled.

30 (2) In the case of the death of a person who, if he had not died, would, under the provisions of this section, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate. ”

The following passage found in Simon's Income Tax, Vol. I, paragraph 264, shews that our practice is similar to that followed in the United Kingdom :—

40 “ In the case of a sole proprietor of a trade or profession, the trade or profession is usually treated as having ceased as at the date of death, and the new proprietor, if any, as having commenced a fresh trade or profession from the date of death or acquisition ”.

It will be noted that while the U. K. section refers to a business being discontinued our section refers to a person ceasing to carry on or exercise a business. The difference in wording, in my opinion, strengthens the Assessor's contention that Section 11 (6) (b) is applicable in case of death.

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The only other point for consideration is whether there is anything in Section 11 (6) or any other part of Section 11 which compels me to hold that Section 11 (6) (b) cannot be applied to the circumstances of this case.

Mr. Choksy argued that the following words “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” in Section 11 (6) make it clear that this section cannot be applied to a case of a man who dies, as in no event can such a person have any statutory income for the year of assessment following that in which the death occurs. The answer to that is that these words are there not for restricting the applicability of the section to particular ways by which cessation may occur but for protecting a person who may have liability on income from other sources in the year following that in which a cessation of one source occurs from being called upon to pay tax again on income already taxed on the current year basis in the year of cessation in the following year on the preceding year basis. 10

Mr. Choksy further urged that sub-section (9) which specifically deals with death must be considered to cover all adjustments required and allowed by the Ordinance on the death of a person with regard to income that accrued to the deceased in respect of periods prior to death. He contended that Section 11 (9) had the same effect as Section 11 (6) (a) to incomes from business and employment and that if it was intended that Section 11 (6) (b) should apply in case of death the necessary provision would have been included in Section 11 (9). It must be pointed out that Section 11 (9) deals only with the year of assessment in which the death takes place and its object is to apply the current year principle to incomes from all sources. 20 30

A reference to sub-section (10) is instructive. Proviso (iii) to that section shows that where the intention was to exclude the applicability of any particular sub-section a specific provision has been provided for the purpose.

For the reasons set out I hold that Section 11 (6) (b) has been correctly applied in arriving at the statutory income of the late Mrs. N. C. Peiris for the year of assessment 1950/51. The appeal is dismissed but the assessment appealed against is revised by increasing the assessable income as set out above in the paragraph headed “Determination”. 40

(Sgd.) C. A. SPELDEWINDE,  
Commissioner of Income Tax.

Colombo, August 1, 1953.

**Income Tax Appeal to the Board of Review—The Estate of the late  
Mrs. Nancy Charlotte Peiris**

No. 1.  
Case stated for  
the opinion of  
the Supreme  
Court  
8.1.54—*contd.*

No. BRA—231.

*Assessment File No. 54/763*

*Present* : Sir Arthur Wijeyewardene, Kt., Q.C. (Chairman)

Dr. H. S. Christoffelsz

Mr. E. W. Kannangara, C.B.E.

*Date of hearing* : 24th September, 1953.

10 *Present for the Appellant* : Mr. N. K. Choksy, Q.C., with Mr. P. Navarathnarajah, Advocate, instructed by M/s. F. J. & G. de Saram, Proctors.

*Supporting the Assessment* : Mr. S. A. Jayawardene, Assessor.

*Decision of the Board* :

20 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.

We therefore allow the appeal.

(Sgd.) E. A. L. WIJEYEWARDENE,  
Chairman.

Colombo, 30th September, 1953.

The Clerk to the Board of Review.

**Income Tax Appeal—Estate of the late Mrs. N. C. Peiris**

30 In terms of Section 74 (1) of the Income Tax Ordinance (Cap. 188) I hereby request you to state a case for the opinion of the Supreme Court on the questions of law arising in the above appeal.

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2. I annex hereto the question of law on which the case should be stated to the Supreme Court.

3. I also enclose a cheque for Rs. 50.

*Question of Law*

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? **10**

(Sgd.) C. A. SPELDEWINDE,  
Commissioner of Income Tax.

Income Tax Office,  
Colombo 3, October 30, 1953.

**Judgment of the Supreme Court**

No. 2.  
Judgment of the  
Supreme Court.  
2.3.56

*S. C. 27—M/1954. (F).*

A case stated for the opinion of the Honourable the Supreme Court of Ceylon under the provisions of section 74 of the Income Tax Ordinance (Cap. 188), upon the Application of The Commissioner of Income Tax.....*Appellant*

J. L. D. Peiris.....*Respondent*

*Present* : Gratiaen, J. and Gunasekara, J.

10 *Counsel* : M. Tiruchelvam, C. C., with A. Mahendraraja, C. C., and R. S. Wanasundere for the Appellant.  
H. V. Perera, Q.C., with S. J. Kadirgamar and John de Saram for the Respondent.

*Argued on* : 20th February, 1956.

*Decided on* : 2nd March, 1956.

GRATIAEN, J.—

20 THIS is a case stated under the provisions of section 74 of the Income Tax Ordinance (Cap. 188). Mrs. Nancy Charlotte Peiris (hereafter called " the deceased ") died on October 23rd, 1951. One of her sources of taxable income had been her agricultural business. It was common ground between the taxing authority and her Executor that her statutory income for the year of assessment in which she died should, in respect of all her sources of income, be computed under section 11 (9) of the Ordinance. There was disagreement, however, as to how her statutory income for the preceding year should be ascertained. The Assistant Commissioner decided that the income derived from agricultural business during that year must be computed under paragraph (b) of section 11 (6) because she had " ceased ", by reason of her death, to carry on this business. Upon 30 appeal, the Commissioner confirmed the assessment on this basis, but the Board of Review ruled in favour of the executor that section 11 (6) (b) applied only to " a cessation of business by a living person. " It is common ground that the deceased's income from other sources must be computed under section 11 (1).

The questions of law submitted for the opinion of this Court at the instance of the Commissioner are in the following terms :

“ On the facts as submitted between the parties, did Mrs. N. C. Peiris, upon her death on 23.10.51, 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 purposes of computing the statutory income of Mrs. Peiris for the year of assessment preceding that in which she died ? ”

10

The admitted facts which are relevant to our decision are that the deceased had continued to carry on an agricultural ‘business’ within the meaning of the Ordinance until the date of her death. She had also derived income from this and other taxable sources during the year of assessment in which she died, viz., 1951/1952 and also during the preceding year 1950/1951. The amount of tax in dispute is Rs. 175,956.66.

The scheme of taxation laid down by the Ordinance appears in sections 5 (1), 11 (1), 11 (6), and 11 (9). Their provisions are to the following effect :

20

*Section 5 (1)* “ Income tax shall, subject to the provisions of this Ordinance...be charged... for each subsequent year of assessment (i.e., after the year commencing on 1st April, 1932) in respect of the profits and income of every person for the year preceding the year of assessment...but without prejudice to any of the 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 year of assessment.”

30

*Section 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 (the sources of income are enumerated in section 6)...shall be the full amount of the profits and 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 ”.

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*Section 11 (6)* “ Where a person resident or non-resident ceases to carry on or exercise a trade, business, profession, vocation or employment (these are included in the

sources of income enumerated in section 6) in Ceylon or, being resident elsewhere, his statutory income therefrom shall be :

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Supreme Court.  
2.3.56—*contd.*

(a) as regards the year of assessment in which the cessation occurs, the amounts of the profits of the period beginning on the 1st 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, vocation or employment for the year following that in which the cessation occurs ”.

20 (There follows a proviso which has no bearing in the present context)

*Section 11 (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 1st day of April in the year, and ending on that day.* ”

(*Section 11 (10)* provides for the ascertainment of the statutory income of the executor of a deceased person as regards the year in which the death occurs and also as regards subsequent years of assessment.)

30 Section 5 (1) provides that, as a general rule, a tax is imposed for each year of assessment in respect of the profits and income for the preceding year. This general rule is without prejudice to any provisions of the 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 year of assessment. ” Section 11 (1), appearing in the chapter dealing with the ascertainment of statutory income for any particular year, is to the same effect. It therefore follows that, unless any special exceptions in other parts of section 11 are found to be applicable to the facts of the present case, the deceased’s statutory income (including that derived from agriculture) for the year 1951/1952 would be the aggregate of her nett income from these sources during 1950/1951. Similarly, her statutory income from all sources for 1950/1951 would be the aggregate of her nett income during 1949/1950.

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Supreme Court.  
2.3.56—*contd.*

Section 11 (6) introduces a limited exception to the general scheme of taxation laid down in sections 5 (1) and 11 (1). When a person has "ceased" to carry on or exercise a trade, profession, vocation or employment, two consequences follow. His statutory income from that particular source 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 will be observed, however, that for each of these years the assessee's statutory income from every other source must continue to be computed as prescribed by section 11 (1). Moreover, it is clear that when a cessation occurs, section 11 (6) is intended to be brought into operation simultaneously in respect of both years of assessment: it is therefore not permissible to apply the exception in respect of one year but not of the other. Paragraphs (a) and (b) of section 11 (6) are therefore interconnected parts of a single proviso, and not separate and distinct exceptions.

10

Section 11 (9) introduces yet another exception to the general scheme. It enacts that, when any person dies, the whole of his statutory income (i.e. from every taxable source) for that particular year shall not be computed under section 11 (1) but by reference to the actual aggregate of income and profits accruing up to the date of death. The deceased's statutory income for 1951/1952 was therefore properly computed under section 11 (9) and not under either section 11 (1) or paragraph (a) of Section 11 (6).

20

No special provision is made in section 11 (9) for the computation of a person's statutory income for the year of assessment preceding the year in which he died. Unless, therefore, section 11 (6) can properly be applied partially to such a situation, the assessment must be made in accordance with the general scheme for computation laid down by section 11 (1). This was the view taken by the Board of Review.

30

The argument in support of the applicability of paragraph (b) of section 11 (6) to a case of cessation by reason of death must now be examined. It is contended that, as far as the deceased's agricultural business was concerned, she "ceased" to carry it on by reason of her death. I do not dispute the proposition that it would not be an appropriate use of the English language to say that a person "cannot vacate an office better than by dying in it" per Rowlatt J. in *Hunter v. Dewhurst* (1). Nor do I deny that in the context of certain taxing statutes the words "where a person ceases to hold an office" may be sufficiently general to cover cessation by death as well as by resignation or dismissal. *Allan v. Trehearne* (2). But the problem cannot be solved merely by ascertaining all the possible meanings of particular words appearing in a taxing statute. They must be construed in the context of the entire scheme of taxation prescribed in the enactment.

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In my opinion, section 11 (9) provides 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). I agree with the Board of Review that section 11 (6) is 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 or vocation. Section 11 (6) appears to me 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.

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2.3.56—*contd.*

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Let it be conceded that section 11 (6) *prima facie* covers a case of 'cessation' by death. Even on that assumption, section 11 (9) is 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) does not apply in respect of the year in which the death occurred, paragraph (b) of section 11 (6) must also be ruled out as far as the preceding year is concerned.

30

The present dispute relates to the assessment for 1950/1951. Under section 5 (1), which is the general charging section, the tax is payable (as the executor contends) "in respect of the deceased's profits and income for the year preceding the year of assessment", and her statutory income must be computed under section 11 (1) in the absence of any clear provision to the contrary. In my opinion, the questions of law submitted for the opinion of this court must be answered in favour of the executor, and I would award him the costs of these proceedings.

(Sgd.) E. F. N. GRATIAEN,  
*Puisne Justice.*

GUNASEKARA, J.—

I agree.

(Sgd.) E. H. T. GUNASEKARA,  
*Puisne Justice.*

**No. 3**

**Decree of the Supreme Court**

D. C. (F) 27, 1954.

**ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF  
HER OTHER REALMS AND TERRITORIES, HEAD OF THE  
COMMONWEALTH**

**IN THE SUPREME COURT OF THE ISLAND  
OF CEYLON**

In the matter of a case stated for the opinion of the Supreme Court  
under the provisions of section 74 of the Income Tax Ordinance 10  
(Cap. 188), upon the application of :

The Commissioner of Income Tax.....*Appellant.*

*against*

J. L. D. Peiris (Executor of the estate of the late Mrs. N. C. Peiris)  
33, Chapel Street, Off Union Place, Colombo 2....*Respondent.*

Income Tax Case stated No. 54/763 BRA 231.

THIS cause coming on for hearing and determination on the 20th  
February and 2nd March, 1956, and on this day, upon an appeal  
preferred by the appellant above named before the Hon. E. F. N.  
Gratiaen, Q.C., Puisne Justice, and the Hon. E. H. T. Gunasekara,  
Puisne Justice of this Court, in the presence of Counsel for the  
Appellant and Respondent. 20

It is considered and adjudged that the questions of law submitted  
for the opinion of this Court be and the same are hereby answered  
in favour of the executor and he is awarded the costs of these pro-  
ceedings.

Vide copy of judgment attached.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice, at  
Colombo, the 28th day of March, in the year One thousand Nine  
hundred and Fifty-six and of Our Reign the Fifth. 30

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, Supreme Court.*

No. 4

Application for Conditional Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 4.  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
27.3.56

A case stated for the opinion of the Honourable the Supreme Court of Ceylon under the provisions of Section 74 of the Income Tax Ordinance (Cap. 188), upon the application of the Commissioner of Income Tax.

10 The Commissioner of Income Tax.....*Appellant.*

D.C. (F) 27 of 1954 Vs.

J. L. D. Peiris (Executor of the Last Will and Testament of Mrs. N. C. Peiris (deceased), of 33 Staples Street, off Union Place, Colombo 2..... *Respondent.*

*and*

In the matter of an application for conditional leave to appeal to Her Majesty the Queen in Council.

Cecil Alexander Speldewinde, Commissioner of Income Tax  
..... *Appellant-Appellant.*

20 Vs.

J. L. D. Peiris (Executor of the Last Will and Testament of Mrs. N. C. Peiris (deceased), of 33, Staples Street, off Union Place, Colombo 2.....*Respondent-Respondent.*

To : THE HONOURABLE THE CHIEF JUSTICE AND OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 27th day of March, 1956.

30 THE petition of the Appellant-Appellant above named appearing by Behram Kaikhushroo Billimoria and his assistants Abdul Hameed Mohamed Sulaiman and Solomon Christoffel Obeysekere de Livera, his Proctors, states as follows :—

1. Upon a case stated for the opinion of Supreme Court by the Income Tax Board of Review at the instance of the appellant-appellant above named under Section 74 of the Income Tax Ordinance

No. 4.  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
27.3.56—*contd.*

(Cap. 188), the Supreme Court made order thereon on the 2nd day of March, 1956. The case stated is numbered D. C. 27 of 1954 (F), and is hereinafter referred to as "the said case".

2. That feeling aggrieved by the Judgment and order of this Honourable Court pronounced on the 2nd day of March, 1956, in the said case, the Appellant-Appellant is desirous of Appealing therefrom to Her Majesty the Queen in Council.

3. That the said order is by virtue of the provisions of Section 74 (7) of the Income Tax Ordinance (Cap. 188), a final judgment in a civil action and the matter in dispute on the appeal amounts to or is of the value of five thousand rupees and upwards. 10

4. That notice of the intended application for leave to appeal was served on the Respondent-Respondent on the 12th day of March, 1956, in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance, Chapter 85, as appears from the affidavit annexed hereto.

WHEREFORE the Appellant-Appellant prays for conditional leave to appeal to Her Majesty the Queen in Council against the said judgment of this Court dated the 2nd March, 1956.

(Sgd.) A. H. M. SULAIMAN, 20  
*Proctor for Appellant-Appellant.*

No. 5

Decree granting Conditional Leave to Appeal to the Privy Council

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application dated 27th March, 1956, for Conditional Leave to Appeal to Her Majesty the Queen in Council by the Appellant against the decree dated 2nd day of March, 1956.

10 Cecil Alexander Speldewinde, Commissioner of Income Tax
.....Appellant.

against

J. L. D. Peiris (Executor of the Last Will and Testament of Mrs. N. C. Peiris (deceased), of 33, Staples Street, off Union Place, Colombo 2.....Respondent.

Supreme Court No. 27 (F) of 1954.

20 THIS cause coming on for hearing and determination on the 7th day of June, 1956, before the Hon. K. D. de Silva, Puisne Justice, and the Hon. M. C. Sansoni, Puisne Justice, of this Court, in the presence of Counsel for the Appellant.

It is considered and adjudged that this application be and the same is hereby allowed.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice, at Colombo, the eighteenth day of June, in the year One thousand Nine hundred and Fifty-six and of Our Reign the Fifth.

(Sgd.) W. G. WOUTERSZ, Deputy Registrar, Supreme Court.

No. 5. Decree granting Conditional Leave to Appeal to the Privy Council. 7.6.56.

No. 6.  
Application for  
Final Leave to  
Appeal to the  
Privy Council.  
14.6.56.

No. 6

**Application for Final Leave to Appeal to the Privy Council**

**IN THE HONOURABLE THE SUPREME COURT  
OF THE ISLAND OF CEYLON**

A case stated for the opinion of the Honourable the Supreme Court of Ceylon under the provisions of Section 74 of the Income Tax Ordinance (Cap. 188), upon the application of the Commissioner of Income Tax.

The Commissioner of Income Tax ..... *Appellant.*

S. C. (F) 27 of 1954 ..... *vs.* 10

J. L. D. Peiris (Executor of the Last Will and Testament of Mrs. N. C. Peiris (deceased), of 33, Staples Street, off Union Place, Colombo 2 ..... *Respondent*

*and*

In the matter of an application for final leave to appeal to Her Majesty the Queen in Council under the Appeals (Privy Council) Ordinance, Cap. 85.

Cecil Alexander Speldewinde, Commissioner of Income Tax ..... *Appellant-Petitioner.*

S. C. Application No. 106 of 1956 ..... 20

*vs.*

J. L. D. Peiris (Executor of the Last Will and Testament of Mrs. N. C. Peiris (deceased), of 33, Staples Street, off Union Place, Colombo 2 ..... *Respondent-Respondent.*

*To* : The Honourable the Chief Justice and other Judges of the Supreme Court of the Island of Ceylon.

On this 14th day of June, 1956.

The petition of the Appellant-Petitioner above named appearing by Behram Kaikhushroo Billimoria and his assistants Abdul Hameed Mohamed Sulaiman and Solomon Christoffel Obeysekere de Livera, his Proctors, states as follows :— 30

(1) That the Appellant-Petitioner on the 7th day of June, 1956, obtained conditional leave from this Honourable Court to appeal

to Her Majesty the Queen in Her Privy Council against the judgment and Order of this Court pronounced on the 2nd day of March, 1956.

No. 6.  
Application for  
Final Leave to  
Appeal to the  
Privy Council.  
14.6.56.—*contd.*

(2) That in view of the provisions of Section 74 (7) (c) of the Income Tax Ordinance (Chapter 188), as amended by Section 2 of Ordinance No. 26 of 1939 the Appellant-Petitioner on appeal to Her Majesty the Queen in Council is not required to make any deposit or pay any fee or furnish any security prescribed by or under the Appeals (Privy Council) Ordinance (Chapter 85).

10 (3) That no conditions were imposed under rule 3 (b) of the Rules contained in the Schedule to Appeals (Privy Council) Ordinance (Chapter 85).

WHEREFORE the Appellant-Petitioner prays that he be granted final leave to appeal against the said judgment and order of this Court dated the 2nd day of March, 1956, to Her Majesty the Queen in Her Privy Council.

(Sgd.) A. H. M. SULAIMAN,  
*Proctor for Appellant-Petitioner.*

No. 7.  
Decree Granting  
Final Leave to  
Appeal to the  
Privy Council.  
10.7.56.

No. 7

**Decree granting Final Leave to appeal to the Privy Council**

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER  
OTHER REALMS AND TERRITORIES, HEAD OF THE  
COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND  
OF CEYLON

In the matter of an application by the appellant dated 14th June,  
1956, for Final Leave to appeal to Her Majesty the Queen in Council  
against the decree of this Court dated 2nd day of March, 1956. 10

Cecil Alexander Speldewinde, Commissioner of Income  
Tax ..... *Appellant.*

*against*

J. L. D. Peiris (Executor of the Last Will and Testament of  
Mrs. N. C. Peiris (deceased), of 33, Staples Street, off Union  
Place, Colombo 2 ..... *Respondent.*

Supreme Court No. 27 (F) of 1954.

THIS cause coming on for hearing and determination on the 10th  
day of July, 1956, before the Hon. H. N. G. Fernando, Puisne Justice,  
and the Hon. N. Sinnetamby, Puisne Justice, of this Court, in the  
presence of Counsel for the Applicant. 20

The applicant has complied with the conditions imposed on him  
by the order of this Court dated 7th June, 1956, granting Conditional  
Leave to appeal.

It is considered and adjudged that the applicant's application for  
Final Leave to appeal to Her Majesty the Queen in Council be and  
the same is hereby allowed.

Witness the Hon. Hema Henry Basnayake, Q. C., Chief Justice at  
Colombo, the 24th day of July, in the year One thousand Nine  
hundred and Fifty-six and of Our Reign the Fifth. 30

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, Supreme Court.*