

6,1958

1.

IN THE PRIVY COUNCIL

No. 3 of 1957 UNIVERSITY OF LONDON

ON APPEAL

21 JAN 1959

FROM THE SUPREME COURT OF CEYLON

RECORDED  
STUDIES

B E T W E E N

52060

CECIL ALEXANDER SPELDEWINDE,  
Commissioner of Income Tax, Colombo  
Appellant

- and -

CYRIL SHIRLEY DE ZOYSA ... Respondent

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment and an order of the Supreme Court of Ceylon (Basnayake C.J. and de Silva J.) both of the 29th May 1956 on a case stated by the Board of Review under the provisions of section 74 of the Income Tax Ordinance (Cap. 188) upon the application of the Commissioner of Income Tax.

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20 2. The Respondent to this appeal will be referred to hereinafter as the "assessee".

3. The facts of the case and the events leading up to the determination by the Commissioner of Income Tax are set out as follows, by the Board of Review :-

(1) The assessee's wife owned a 4 acre block of land at Boosa and other surrounding lands in undivided shares. These lands had been requisitioned during the war and the Admiralty had erected 10 hangars and some building thereon.

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30 (2) By the end of 1947 it became known that the Admiralty was about to move out of the land and the assessee approached the Senior Surveyor of Lands with a view to purchasing the hangars. In

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contacting the Senior Surveyor the assessee sought and obtained the assistance of Mr. H.W.Gunatilleke of Messrs. H.W. Gunatilleke & Co. Ltd., who were dealing in the purchase and sale of surplus war materials and supplies. The policy of the Naval Authorities was to give the owners of the land requisitioned the option of purchasing the buildings erected thereon.

(3) The assessee arranged with the co-owners of the lands to permit him to negotiate with the Authorities for the purchase of the hangers. He paid them certain sums for surrendering their rights in the option to purchase and to compensation for damage. After the assessee had commenced negotiations with the Naval Authorities, the Ceylon Government acquired the lands for the use of the Railway. He then continued negotiations with the Railway and agreed to purchase 9 hangars at Rs. 90,000. The tenth hangar was sold to a third party later. The assessee himself had no money to purchase the hangars. Mr. H.W. Gunatilleke agreed to find the money on condition that he received a 1/3 share of the net profits. 10  
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(4) There was a great demand for these hangars in India and Mr. Gunatilleke attempted to get the money required by advertising in the Indian newspapers. Both he and the assessee went to India in this connection. Many offers were received but the highest tenderer withdrew his offer after inspection. Mr. Gunatilleke found a local purchaser, Mr. T.B. Beddewala, who agreed to buy the 9 hangars for Rs. 288,000. An advance of Rs. 5,000 was paid and he undertook to pay the balance on fixed dates - Document R 1 - He however failed to keep to the terms. The Railway was pressing for payment and the hangars were rapidly deteriorating. Mr. Gunatilleke was unable to find the money and gave up the quest retaining for himself the advance paid by Beddewala. 30

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(5) At this stage the assessee obtained Rs. 45,000 from his father and received the balance Rs. 45,000 from Senator Cyril de Zoysa on the basis of the agreement R 2 dated June 14, 1954. The Railway was paid in full on June 15, 1948. 40

(6) The assessee advertised the hangars for sale in the local newspapers. Mr. Beddewala came forward again and the 9 hangars were sold to him, who had found a purchaser in Pakistan, for Rs. 279,000. Senator Cyril de Zoysa accepted a 1/4 share of the profit calculated as follows:- 50

|   | Rs.           |
|---|---------------|
| Total sale price of 9 hangars ..              | 279,000       |
| Less purchase price .. ..                     | <u>90,000</u> |
|   | 189,000       |
| Senator Cyril de Zoysa's $\frac{1}{4}$ share. | 47,250        |

(7) The assessee's share of profit was agreed with the assessor at Rs.144,000 as follows:-

|  | Rs.            |
|--|----------------|
| 10 Three-fourth share .. ..                                      | 141,750        |
| Sale of corrugated sheets .. ..                                  | <u>20,250</u>  |
|  | 162,000        |
| Less advance retained by<br>Mr. Gunatilleke .. 5,000             | 5,000          |
| Expenses - including pay-<br>ments to co-owners .. <u>13,000</u> | <u>18,000</u>  |
|  | <u>144,000</u> |

20 (8) The assessee was assessed to income tax for the year of assessment 1948-49 at Rs.200,000 and for the year of assessment 1949-50 at Rs.200,000 and for Profits Tax for the year 1949 at Rs.200,000.

(9) The assessee appealed to the Commissioner of Income Tax against the assessments on the ground -

(1) that the profits sought to be assessed are in fact a capital accretion and not liable to tax.

(2) that the profits are of a casual and non-recurring nature and therefore not liable to tax.

30 (10) The Commissioner of Income Tax heard the appeal and gave his decision fixing the statutory income from this source for the year of assessment 1948-49 at Rs. 144,000 and (the taxable profits from this source) for the Profits Tax year 1949 at Rs. 144,000. The Commissioner allowed the appeal against the assessment to Income Tax for the year of assessment 1949-50. The determination and reasons of the Commissioner of Income Tax were annexed to the Case as part of the case marked XI.

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40 4. The assessee appealed to the Board of

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Review. The Board, by a majority decision, held in favour of the assessee.

5. The Commissioner of Income Tax asked that a case be stated for the opinion of the Supreme Court under section 74 of the Income Tax Ordinance (Cap. 188). The Board of Review accordingly stated the following question of law :-

On the facts established in this case, is the sum of Rs. 144,000 earned by the assessee by the purchase and resale of hangars liable to tax as being profits falling within the meaning of Section 6 (1) (a) of the Income Tax Ordinance ?

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6. The Supreme Court was of the opinion that the question of law ought to be answered in favour of the assessee and accordingly dismissed the appeal.

The present appeal is from that opinion and the judgment and order of the Supreme Court.

7. The Respondent (assessee) submits that this appeal should be dismissed with costs for the following among other

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## R E A S O N S

(1) BECAUSE the sum of Rs. 144,000 is not income falling to be assessed under the Income Tax Ordinance;

(2) BECAUSE the transaction in question was not a trade, or business, or an adventure in the nature of a trade or business, and the receipt in question is not a receipt from a trade or business or an adventure in the nature of a trade or business;

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(3) BECAUSE there was no purchase and sale in so far as there was no purchase of the hangars in question, the owner of the land being the owner of the hangars subject to the right of the person who erected the hangars to receive compensation or to remove the hangars;

(4) BECAUSE the assessee was the agent of his wife who was one of the co-owners of the land in question;

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- (5) BECAUSE even if it is income, it is of a casual and non-recurring nature and falls for exclusion from assessment under section 6 (1) (h) of the Income Tax Ordinance.
- (6) BECAUSE the receipt is a realization of capital accretion to the land;
- (7) BECAUSE the receipt is a compensation for damage done to the property during the period of military occupation;
- (8) BECAUSE the decision of the Board of Review is right; and
- (9) BECAUSE the opinion and judgment of the Supreme Court is right.

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S. AMBALAVANER

SIRIMEVAN AMERASINGHE

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- and -

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CASE FOR THE RESPONDENT

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