

P.C.  
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Judgment  
10, 1965

31 OF 1964

Supreme Court of Ceylon,  
No. 3 of 1962.

Income Tax Case Stated  
BRA—303

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

BETWEEN

H. V. RAM ISWERA of No. 79, Alexandra Place, Colombo 7.

..... *Assessee-Appellant*

AND

THE COMMISSIONER OF INLAND REVENUE, Colombo.

..... *Assessor-Respondent*

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RECORD  
OF PROCEEDINGS

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~~P.C.~~  
GLI.G.2.

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
STUDIES  
- 8 FEB 1966  
LONDON, W.C.1.

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No. 1

**DETERMINATION AND REASONS UNDER SECTION 71(2)  
OF THE INCOME TAX ORDINANCE**  
(with annexes marked "A" & "B")

File No. 57/9043.

**DETERMINATION AND REASONS UNDER SECTION 71 (2)  
OF THE INCOME TAX ORDINANCE (Cap. 188).**

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Determination  
and Reasons  
under Section  
71 (2) of the  
Income Tax  
Ordinance—  
22-4-61.

10 Appeal of Mr. H. V. Ram Iswera, Assessee, against an assessment made on him for Income Tax for the years of assessment 1950/51, 1951/52, 1952/53, 1953/54 and 1954/55, heard by Mr. R. R. Selvadurai, Authorised Adjudicator, on the 17th August 1960, 1st September 1960, 2nd December 1960, 10th December 1960, 17th December 1960, 16th January 1961, 3rd February 1961, 23rd February 1961, 11th March 1961 and 1st April 1961.

*For the Appellant:* Mr. Advocate Ambalavanar instructed by Mr. H. V. Ram Iswera, Proctor.

*Supporting the Assessment:* Mr. Mitrasena, Assessor.

	1950/51	1951/52	1952/53
20	46337	85972	78652
	55400	43961	
Assessed	150,000	97,069	87,008
	100,000	200,000	
Tax in dispute	50,696	6,450	4,730
	23,571	116,016	

*Grounds of Appeal:*

- 30 (1) The Assessee is not liable to tax on account of capital position discrepancies.
- (2) The Assessee is not liable to tax on profits on sales of building blocks.

*Facts:*

By deed No. 3770 dated the 30th July 1951, the Assessee's wife purchased the land and buildings bearing assessment No. 18 Cotta Road, Borella of extent 2 roods 23.44 perches for a sum of Rs. 115,000/-. This was divided into 5 blocks and re-sold for Rs. 121,913. Gross profit was Rs. 6,913/-. Expenses incurred amounted to Rs. 4,441/- leaving a net profit of Rs. 2,472/-. It was agreed that this be apportioned at the rate of Rs. 1,236 for the Year of Assessment 1951/52 and a similar sum for the Year of Assessment 1952/53.

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By deed 3684 dated 3rd March 1951 the Assessee's wife entered into an agreement with one Mrs. S. Thambiyah to purchase by herself or through nominees on or before 20th April 1951 the land and buildings bearing assessment No. 81, Alexandra Place, Cinnamon Gardens of extent 2 acres 2 roods 33 perches for a sum of Rs. 450,000/-. The house standing on the land was demolished and the land was divided into 14 blocks by about the end of March 1951. Two blocks were reserved as roadways. The Assessee's wife by deed No. 519 of 8th April 1951 and subsequent dates purchased some of the blocks and the rest were conveyed by Mrs. Thambiyah to the nominees of the Assessee's wife. Eventually the Assessee's wife took two blocks of a total extent of 70 perches. The sale price of the 10 blocks conveyed to the nominees was 434,725. Value of the 2 blocks reserved for the Assessee's wife at market price is Rs. 87,040. So the total price realised by sale and reservation is Rs. 521,765. Deducting the purchase price of Rs. 450,000, gross profit is Rs. 71,765. In the event of it being held that the Assessor is liable to tax on the transactions relating to the purchase and sale of this Alexandra Place property it was agreed between Mr. Ambalavanar and the Assessor that they would jointly compute the net profit. It was also agreed that in the event of it being held that these profits are liable to be taxed 1/3rd the profits be taxed for the Year of Assessment 1950/51 under Section 11(3) and 2/3rd for Year of Assessment 1951/52 under Section 11(4) or 11(5).

*Documents produced for the Appellant :*

- A1. Letter by Mr. K. C. Nadarajah dated 10th December 1960
- A2. Deed of Agreement No. 3684 dated 3rd March 1951
- A3. Letter by Mr. Boteju dated 15.11.57
- A4. Letter by Mr. Boteju dated 4.12.57
- A5. Copy of reply by Mr. Ram Iswera dated 19.11.57
- A6. Computation of capital position  
 (Not relevant now)

*Documents produced by the Assessor :*

- R1. A Schedule
- R2. A statement
- R2.A —do—
- R3. Assessor's computation in letter dated 30.12.60  
 (The above are not relevant now)
- R6. Letter dated 15th July 1957 by Mr. Ram Iswera annexing 3 letters.
- R7. Deed No. 519 of 8th April 1951 and subsequent dates.

*Arguments for the Appellant :*

For the profits arising from transactions in regard to the purchase and sale of the Alexandra Place property to be taxable they have to be brought under Section 6(1) (a) of the Ordinance. The principle to

be derived from the several cases on this subject is that where the nature of the article dealt with is such that no construction other than that it was intended to turn over by way of a commercial asset is possible then such a transaction is an adventure in the nature of trade and the profit is taxable. But where the nature of the article bought is susceptible of another construction then it is not taxable because it is not an adventure in the nature of trade even if there was a profit motive. Purchase and sale of property is characteristic of trade but it is not distinctive of trade. So that if there is an adventure for it to be in the nature of trade there must be something more. One of the essential facts is the motive to make profits. There must be something done in the transaction which savours of trading. In the case under consideration there was no motive to make a profit ; there had been no activity which savours of trading.

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Counsel cited 18 I.T.R. 286, 20 I.T.R. 176, 22 I.T.R. 379, 5 T.C. 658, 5 T.C. 424, 14 T.C. 694, 34 T.C. 389, 12 I.T.R. 472, 7 I.T.R. 470.

*Arguments by the Assessor.*

Section 2 of the Ordinance defines trade as including every adventure and concern in the nature of trade. Normally trade means a repetition of an activity of trade. But an isolated transaction in certain circumstances will constitute an adventure or concern in the nature of trade. There must be the commercial element. The intention of the taxpayer is important. This can be judged from his actions. In this case the commodity dealt with is land. It can be held as an investment or because it gives pride of possession. In this case the land was not purchased for either of these purposes. A characteristic that one can consider is whether anything was done to mature the subject matter to make it more attractive and readily saleable. If a land is sub-divided it is characteristic of trading but one has to see whether he had done it as a land speculator. Business knowledge of the taxpayer has to be considered. Has he any experience or skill in dealing with the line of business. In this case the purchaser is Mrs. Ram Iswera. But she left it to her husband who is a Proctor with knowledge of land transactions. Whether there is organization in transacting the business is a point that may be considered. The frequency of the transaction is another point. In this case the Alexandra Place transaction and the Cotta Road transaction were close to each other.

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He cited 11 T.C. 297, 15 T.C. 340, 5 T.C. 159, 9 T.C. 309, 24 T.C. 498, 11 T.C. 538, 12 T.C. 358, 36 T.C. 237, 22 I.T.R. 502, Taxation Journal of 7th May 1960 at page 132, 36 T.C. 275.

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*Determination :*

There were two matters in dispute in this case. One was with regard to the capital position of the Assessee. This resolved into a



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question of what sums the Assessee had expended by way of living expenditure in the years ending 31-3-50, 31-3-51, 31-3-52, 31-3-53 and 31-3-54. Arguments were advanced and evidence placed before me and at the hearing on 16-1-61. I was asked to make an immediate determination. I determined as follows :— Rs. 6,000/- for the year ending 31-3-50, 7,000/- for the year ending 31-3-51, 8,000/- for the year ending 31-3-52, 9,000/- for the year ending 31-3-53 and 10,000/- for the year ending 31-3-54.

This determination was accepted by Mr. Ambalavanar. On this basis it was agreed that there is no addition to be made to the income shown by the Assessee in his returns for these years. 10

The other matter in dispute is whether the profits made by the Assessee's wife over the purchase of the Alexandra Place property and re-sale reserving a block for herself are liable to tax. I held that the transactions in regard to this are an adventure in the nature of trade and the profits were liable to tax. I determined accordingly, and announced the determination orally in the presence of Mr. Ambalavanar and the Assessee's wife. Mr. Ambalavanar immediately expressed his dissatisfaction.

*Reasons :*

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Mrs. Ram Iswera and Mr. Ram Iswera have given evidence in this case. Their evidence is annexed hereto marked A and B respectively. This evidence shows that they were residing in a rented out house at Hultsdorp. They have four daughters attending St. Bridget's Convent School at Alexandra Place. So Mrs. Ram Iswera desired to purchase a small block and build a house at some place close to the convent. She asked one Mr. Boteju, a broker to look for such a place. He reported that there was a big land adjoining the Convent available for sale. As there was no money to purchase a big land the information given by Boteju was not availed of. Later Mrs. Ram Iswera met Mrs. Ramanathan who is the sister-in-law of Mrs. Thambiah the owner of the big land referred to above and Mrs. Ramanathan arranged for its sale to Mrs. Ram Iswera. Deed of agreement No. 3684 of 3rd March 1951, A 2 was entered into to purchase on or before the 20th April 1951. The state of mind at this point of time is important. Mrs. Ram Iswera says that her idea was to purchase the whole land which is 427 perches in extent and to erect five houses there for her five children. I am unable to regard this seriously. For when Boteju brought it to the knowledge of the wife and husband shortly before Mrs. Ram Iswera met Mrs. Ramanathan that this land was available for sale that information was not availed of as there was no money to purchase it. When agreement A2 was entered into Rs. 45,000/- had to be paid as an advance. There was

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no money to pay this advance. Mr. Ram Iswera had to borrow Rs. 25,000/- from his friend Mr. K. C. Nadarajah and Rs. 20,000/- from a Chettiar, to pay this sum of Rs. 45,000/-. Mrs. Ram Iswera and Mr. Ram Iswera own several houses and an estate. According to Mr. Ram Iswera's evidence if all these were sold the sum of Rs. 450,000/- which is the purchase price of the 427 perches could be realised. But according to the agreement the purchase had to be completed on or before the 20th April 1951. I am told that to sell these properties prospective purchasers wanted vacant possession and also that the prices offered were too low and hence they could not be sold. There is no evidence that any of these properties was advertised for sale or that any serious attempt was made to sell. To my mind it must have been perfectly obvious on the 3rd March 1951 that these properties could not be sold and converted into cash before the 20th April 1951. That being so, with what intention and idea could the agreement A2 have been entered into. It appears clear that shortly after A2 was entered into a sketch plan was prepared showing how the land could be divided into blocks and offers were made of these blocks to various persons. Letter dated 12th March 1951 addressed to Mr. Ram Iswera by one Mr. D. Seneviratne which was produced as an annexure to R6 (and which I am marking as R6 (a) states "In reference to the conversation I had with you, I have before me the rough plan of 81, Alexandra Place. I have talked over the matter with the actual buyer my sister-in-law Mrs. Waiyaratne and she does not want the two blocks near the Shell Petrol Service Station. She is willing to have the two blocks from the Convent side, failing these, the two blocks on the centre of the 20 foot road way . . . . . ." Mr. Ram Iswera's evidence shows that these blocks were not generally advertised for sale as he was able to sell to his friends at higher prices than they would have fetched in the open market. The actual survey and lay-out on the ground was made by Licensed Surveyor S. Rajendra according to plan No. 109 dated 29th March 1951. (Vide deed 519 of 8th April 1951 and subsequent dates R7). To my mind Mr. & Mrs. Ram Iswera had a two-fold object in purchasing this land of 427 perches at Alexandra Place. One was to secure for themselves a building block in close proximity to St. Bridget's Convent where to construct a house where they could reside and send their daughters to school. The other was to divide the land into blocks and to sell them at profitable prices.

Do the above facts disclose a business transaction an adventure in the nature of trade and are the profits revenue receipts or do they disclose that a land owner has converted his land into cash and are the profits capital receipts. I would deal with the case law on the subject.

In the case of Sri Gajalakshmi Ginning Factory Vs. C.I.T. Madras 22 I.T.R. 502 it is stated as follows :—

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“If a person buys land with a view to sell them and thereafter carries on certain operations so as to bring greater profit and facilitate the sale of the plots, it can be said, if it is a single transaction, that his activity is an adventure in the nature of trade, for, the essence of a trade buying and selling for profit, is present on that activity. But if a person buys land with no intention of selling it and after a long interval finds it convenient to sell the land by parcelling it out into different plots and also by laying out roads and providing other amenities with a view to get more price it cannot be said that the activity which he carried on has an element of trade, commerce or business and it cannot be said, therefore, that it is an activity in the nature of trade. He was merely selling and did not, at the time of buying start with the intention of buying and selling with a view to profit. The intention must be that even at the time when the property was acquired it was so acquired for the purpose of sale with a view to make profit. In other words, the object of the acquirer was to deal in that commodity, if one may use that expression, as he deals with goods in the course of an ordinary trade. In the absence of such intention gatherable from the circumstances of the case it is difficult, if not, impossible, to hold that the activity he carried on was something analogous to a trade and therefore the profit he made was not a capital receipt but a revenue receipt.” The learned Judge cites a passage from the judgment of Farwell L. J. in Hudson’s Bay Co Vs. Stevens (5 T.C. 424) as follows :— “Again a landowner may lay out part of his estate with roads and sewers and sell it in lots for building, but he does this as owner, not as a land speculator.” He continues “The contrast is therefore between an owner selling the property for the purpose of converting the investment into money and of a speculator purchasing property with a view to sell and make a profit out of it. If it is the latter, it may be an adventure in the nature of a trade and the income would not be a capital receipt but an income earned by exercise of a trade and would be assessable to tax.” If I may say so with great respect the above is a judgment of remarkable lucidity. If the tests get out are applied to the case under consideration the answers to the tests show that this is a case of a speculator purchasing property with a view to sell and make a profit out of it while getting a block for oneself and not of a land owner converting an investment.

I would also refer to the case of Edwards Vs. Bairstow & Harrison 36 T.C. 207. The main facts culled from the statement of the Special Commissioners are as follows :—

Mr. Harrison became aware in 1946 that a complete spinning plant was available for sale for a reasonable figure. He communicated the information to Bairstow. Both agreed to purchase but had no intention of holding the plant; what they wanted was a quick purchase and re-sale. Bairstow arranged for a valuation to be made

by a professional valuer in order that he might be satisfied that the price asked by the seller was one on which he could make a quick profit. He also immediately and before purchasing the plant made enquiries as to whether he could arrange to sell it before it had been purchased. They wanted to sell it as a complete unit. Eventually they sold the botany spinning plant part first and the other parts later by February 1948. There was no advertising. Customers principally learnt of the existence of the plant for sale when they came to inspect the premises which were being advertised by the original owners as becoming vacant. It was held that it was an adventure in the nature of trade. There are certain elements which are common to the case cited and the case under consideration. Just as Harrison and Bairstow did not intend to hold the property they purchased Mr. & Mrs. Ram Iswera did not intend to hold the property they purchased except for one block. They wanted a quick re-sale and made inquiries for prospective purchasers even before they had purchased themselves. There was no general public advertisement. Lord Radcliffe said in the course of his judgment “ If I apply what I regard as the accepted test to the facts found in the present case, I am bound to say, with all respect to the judgments under appeal, that I can see only one true and reasonable conclusion. The profit from the set of operations that comprised the purchase and sales of the spinning plant was the profit of an adventure in the nature of trade. What other word is apt to describe the operations ? Here are two gentlemen who put their money or the money of one of them, into buying a lot of machinery. They have no intention of using it as machinery, so they do not buy it to hold as an income producing asset. They do not buy it to consume or for the pleasure of enjoyment. On the contrary, they have no intention of holding their purchase at all. They are planning to sell the machinery even before they have bought it. In due course they do sell it in five separate lots, as events turned out. And as they hoped and expected, they make a net profit on the deal after charging all expenses such as repairs and replacements, commissions, wages, travelling and entertainments and incidentals which do in fact represent the cost of organising the venture and carrying it through. This seems to me to be, unescapably, a commercial deal in second-hand plant.” I see little to distinguish this case from the case under consideration. Of course, in the case under consideration Mr. & Mrs. Ram Iswera did not put their money into the transaction. Except for the 20,000 received as a loan from the Chettiar they did

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not invest any money. They got the purchasers from them to contribute the money. Except for one block of 70 perches they did not intend to enjoy the possession of the land. They were planning to sell the land in blocks even before they completed the purchase. They divided the land into blocks to facilitate easy sale. They sold the blocks and made a profit after deducting the expenses incurred. I cannot but come to the conclusion that this was an adventure in the nature of trade.

Several cases have been cited by Mr. Ambalavanar in support of his case. On a close examination of these cases they can be distinguished. I do not think it necessary to review all of them. There have been many reported cases dealing with this subject in some of which it has been held that the transactions are in the nature of trade and in some as not constituting an adventure in the nature of trade. These cases have been examined in the Taxation Journal and the principles summarized in the Journal of the 7th May 1960. They are (1) subject matter of the transaction. Where the subject-matter of the transaction is such that it could have been purchased for a re-sale only then it is an adventure in trade. But that does not apply here as the subject-matter of the purchase was land and it could have been held as an investment if that was the intention. (2) Business knowledge of the tax-payer. In this case Mrs. Ram Iswera left the whole matter in the hands of her husband who is a Proctor and Notary who undoubtedly has acquired knowledge of transactions of purchase and sale of land. (3) Frequency of the transaction. The transaction in regard to the Cotta Road property was stated as indicating frequency. I reject that position as it was after the Alexandra Place transaction. (4) Activities in maturing the subject. The land was surveyed and divided into blocks and roadways laid down in order to facilitate sale. (5) The organisation involved. There has been organisation right from the beginning. A sketch plan was prepared showing how the land could be divided into blocks. This was shown to various friends and relatives and they were asked to buy blocks.

Mr. Ambalavanar produced marked A3 and A4 two letters from Broker Boteju asking for brokerage. They only confirm Mrs. Ram Iswera's evidence that she had asked the broker to find a building block for her close to St. Bridgets Convent to build a house.

At one stage of the hearing Mr. Ambalavanar raised the question as to whether in computing the profits the block which was taken by Mrs. Ram Iswera should be valued at the proportionate purchase price or whether it should be valued at the market price. Later he conceded that it should be valued at the market price.

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There is no dispute in regard to the Cotta Road property transaction. As the sum involved is small Mr. Ambalavanar agreed that the profits are assessable for tax.

Sgd. R. R. SELVADURAI,  
*Authorized Adjudicator.*

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April 22, 1961.

## ANNEX MARKED 'A

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Annex 'A'  
Evidence of  
Lily Harriet  
Ram Iswera.

Lily Harriet Ram Iswera states —

In 1947 - 1948 I was living at Hultsdorp. From the time I married in 1938 I have lived at Hultsdorp. In 1949 I had five children all born at Hultsdorp. It was a small rented out house, the front portion was used as Proctors Office while I lived in the rear portion. The rent paid was Rs. 80/- or 85/- at the beginning. It was subsequently increased. All my children were staying with me. I found it inconvenient. The children fell ill frequently. Lack of proper ventilation. The floor used to get damp during rainy days. The rain water used to leak into the house and I had to put the children into a small room. The children used to go daily to school at St. Bridgets. 10

I owned a house and property at Bambalapitiya, one at Wellawatte. I also purchased a property at Macarthy Road. I cannot remember in which year. I wanted to get a property close to St. Bridgets as four of my children are girls. I had told a number of people of my desire to get a property close to St. Bridgets. I know Mr. A. J. Botejue. He is a broker who used to come to my husband's office often. I used to meet him frequently. I asked him to look for a property close to St. Bridgets. I wanted only a small block to build a house, but he said there was a big land next to St. Bridgets. When I mentioned this to my husband he did not want to put his hand into a transaction of that kind as he did not have the money. Then I dropped that transaction. I used to meet Mrs. V. Ramanathan often when I go to St. Bridgets. She said that the property which was originally mentioned by Botejue was to be sold to E. L. Senanayake. Mrs. Ramanathan's sister-in-law, Mrs. Thambiah was the owner of it. Mrs. Ramanathan said that if I was keen on buying it she would speak to Mrs. Thambiah. The transaction was arranged for me to buy the whole land. I intended to sell all my other properties and buy this land to erect 5 houses for my five children. When I could not sell my other houses, I found it difficult as some wanted vacant possession and the prices offered were low. I asked my husband to sell every property we had in order to buy the Alexandra Place property for ourselves. We came to an agreement with Mrs. Thambiah to buy within a certain period, but we could not sell our properties as the prices offered were too low. Thus my husband spoke to some friends and relatives to purchase some blocks for the Alexandra Place property in order that Mr. Thambiah may be paid. I also spoke to my friends. The people who bought are my friends. They are Mrs. K. C. Nadarajah, Mrs. Balendra and Mr. R. T. Nadarajah who is a relative of my husband. Re the other blocks my husband negotiated the sales. One purchaser is A. P. M. Nooh. I also know him. My husband spoke to him. Another purchaser is I think Seneviratne. Botejue 20 30 40

turned up later and demanded a brokerage when he heard that I had purchased the land. From the time I bought every now and again he writes demanding brokerage. He has written to me and also to my husband. I produce letters received from him dated 15-11-57. A3, 4-12-57. A4 and also a copy of my husband's reply dated 19-11-57. A5. Botejue has been contacting Proctor Somanathan. I got the worst block as we gave the choice to the buyers as we had to collect the moneys quickly. I got the block next to the petrol shed. Mrs. Balendra took the block next to St. Bridgets while I wanted it. She refused to take the block by the petrol shed. To all my friends I offered the block by the petrol shed first. Next to my block, behind it, Mrs. Thambiah wanted it reserved for her as her ancestral house stood on that particular block. I tried to sell in the open market the block we are having but failed. No one liked that block. When I purchased I had no intention of building a house on the side near the petrol shed but only on the other sides, when I wished to own the whole block. I spoke to Mrs. A. P. Jayasuriya also asking her to buy the houses at Macarthy Road as she wanted to open a nursing home. Her house adjoins my house at Macarthy Road. Near the petrol shed I built that house. Mr. Mahendra, brother of Mrs. Balendra, wanted to sell the block he had bought. Then I tried to sell my block and buy that block but I could not because I could not find a purchaser for my block as it was adjoining the petrol shed.

When I intended to buy a block near St. Bridgets, I wanted to invest Rs. 25,000/- or Rs. 30,000/-. No I cannot say how much. I was only interested to buying a land. I cannot say how much it could have cost or how much my husband would have given. My husband would have had to borrow from somewhere to buy. I do not know what resources he had. To enter into agreement with Mrs. Thambiah Rs. 45,000/- had to be paid as advance according to the agreement A2. To pay it a loan of Rs. 25,000/- was taken from Mr. Nadarajah. I don't know who examined the title. My husband attested the deed. When he attests he usually examines the title. My husband got the loan of Rs. 25,000/- from Mr. Nadarajah as they are good friends of ours. I have no idea whether the land was surveyed before or after the purchases, but for blocking up later we had to get it surveyed as we were desperately in need of money. It was surveyed and blocked up into a certain number of blocks. A road way was also provided for access to the blocks. I told my husband to block up and sell. I did not want to sell but because we had no money to pay we had to sell. My husband scolded me for making him to put his hand into such a big transaction. A 2 was entered into, on 3-3-51. A2 stated that either I or my nominee should purchase before 20th April 1951. At the time A2 was entered into I did not have the money to buy the whole property. My intention was to sell all my properties and my husband's and to buy

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71 (2) of the  
Income Tax  
Ordinance—  
22-4-61.  
—(contd.)

Annex 'A'  
Evidence of  
~~H. V. Ram~~  
Iswera  
—(contd.)

*Lily Harriet Ram*



No. 1  
 Determination  
 and Reasons  
 under Section  
 71 (2) of the  
 Income Tax  
 Ordinance—  
 22-4-61.  
 —(contd.)

Annex 'A'  
 Evidence of  
 Lily Harriet  
 Ram Iswera  
 —(contd.)

the whole property. To complete the transaction we could not get the money. The land was bought in a hurry as E. L. Senanayaka was interested in buying it and my friend Mrs. Ramanathan spoke to her sister-in-law and arranged for me to buy. On 3rd March, 1951, when the agreement was entered into, I thought I would succeed in selling up my properties to find the money. On 3rd March 1951, I was hopeful of getting the property for myself. I am unable to say how long after 3rd March 1951 we gave up the idea of getting money by selling up on lands but the last stages we were desperate to find the money. I Can't say how long before 20th April we decided it was impossible to sell our properties and find the money and that we had to sell the blocks. I cannot say whether it was in March but somewhere at the last stages we had to go about into a rough plan, showing the blocks and trying to find purchasers. On or about 13th March I would not have gone into buying and selling the blocks because I was trying to keep the land for myself. I did not reserve a special block for me because I gave the choice to my friends. I had to give the choice to ensure that I got the money to complete the transactions before due date.

10

**Re-exd.**

20

To purchase a property near St. Bridgets, my husband would have to borrow temporarily till we were able to sell one of our properties. Notwithstanding the expectation to sell our own properties we may have made suggestions or inquiries without wanting any further to sell blocks. We have asked from persons — these friends — about the possibility of their purchasing blocks if we were unable to find the whole money.

## ANNEX MARKED 'B'

H. V. Ram Iswera :—

- In 1949 to 1950 I was staying at Hultsdorf. The children were falling ill off and on and my wife was keen we should shift. Personally I would have preferred to live at Hultsdorf for my profession. My wife used to inquire from the people who came to see me about building sites round about St. Bridgets. All my girls were attending St. Bridgets. By people I mean brokers. Brokers regularly come to my office. A broker called Boteju gave my wife information about a land near Bridgets being available for sale. The broker informed that the vendors wanted the entirety of the land to be purchased, and the price quoted was also high. So, as far as Boteju's proposal was concerned the matter was dropped. My wife discussed the matter with a friend and relative Mrs. Ramanathan. Mrs. Ramanathan undertook negotiation for this same block. I thought a portion of the block could be bought and as it was not possible and as my wife was keen on purchasing the block even by selling all her other properties I allowed her to proceed. My wife ultimately entered into agreement A2. Shown deed 3684.
- 10 This is the agreement. The agreement says the land is to be transferred to her or to her nominee. That is the usual term put on every agreement as a precaution. There was no intention of her selling to others at that time. She asked me to arrange to sell her other properties. Specially the recently valued property. I tried to sell but everybody demanded vacant possession. The vendor of the property near St. Bridgets would not give me more than a month. He wanted me to complete the transaction within a month. I made an effort through Mrs. Ramanathan to get an extension at a later stage but she would not agree. Mostly it was my wife who was
- 20 dealing with Mrs. Ramanathan. As I had no money, as a precaution I negotiated with various friends to take over some blocks from the land in the event of my not being able to purchase the whole land. When I say my not being able to purchase the whole land I mean my wife. Ultimately I was not able to sell my wife's properties. So, I had to give away some of the portions to friends. I could not go into the open market. My friends paid the highest price which I could not have got even in the open market. There was a property at Cotta Road which my Superintendent A. H. M. Razeen had agreed to buy and he had paid an advance. He could
- 30 not complete the purchase. He had a property in Wolfendhal Street which he could not sell. Since he would lose his deposit he asked me to help him and I had to go to his rescue. So, I completed the transaction of the Cotta Road property with the intention of keeping it if my wife was willing to keep it or of selling it off. Because the block we got at Alexandra Place was not the best one. Ultimately my wife preferred the Alexandra Place property so I sold off the Cotta Road Property and built a house in the
- 40

No. 1  
Determination  
and Reasons  
under Section  
71 (2) of the  
Income Tax  
Ordinance—  
22-4-61.  
—(contd.)

Annex 'B'  
Evidence of  
H. V. Ram  
Iswera

No. 1  
Determination  
and Reasons  
under Section  
71 (2) of the  
Income Tax  
Ordinance—  
22-4-61.  
—(contd.)

Annex 'B'  
Evidence of  
H. V. Ram  
Iswera  
—(contd.)

Alexandra Place property. My wife supervised the building operation. Since it was done on a labour contract.

The property at Alexandra Place is 427 perches. The block on which I built the house is 70 perches. The agreement to purchase was executed on 3rd March, 1951. The purchase had to be completed before the 20th April, 1951. The consideration for the entire property was Rs. 450,000/- of which Rs. 45,000/- had to be paid as an advance. I borrowed the whole Rs. 45,000/-, Rs. 25,000/- from K. C. Nadarajah and Rs. 20,000/- from V. R. K. R. L. Letchumanan Chettiar. I thought of making up the Rs. 450,000/- by sale of all my wife's properties and if any money was short I would have raised a loan. If all my wife's properties could not be sold I thought some portions of the land could be offered to some friends. The wife's properties which I intended to sell was the Macarthy Road property, a property at Galle Road, Wellawatta and one at Hultsdorf. The Macarthy Road property had no offer as vacant possession could not be given. The position was the same with regard the Wellawatta and also Hultsdorf. That is the reason I took early steps to negotiate with my friends. The negotiations took place between my wife and her friends. The attempt to sell off the properties was subsequent to entering into the agreement. I have also one property which I would sell off if moneys were short. In fact my wife asked me to sell a portion of the estate too. My wife was desperate that I should complete this transaction at any cost. If the proceeds of sale were not sufficient I would have raised the balance by a loan. In the same week after the agreement when I found that I could not get purchasers without vacant possession I negotiated with friends. So did my wife with her friends. The division of the Alexandra Place property did not take place till end of March but I had earlier made only one sketch showing the possible divisions. Shown letter dated 15th July, 1957 R6. This is a letter written by me forwarding three letters I had in my possession. The land was blocked-up if I remember correctly somewhere about end of March. I got it blocked-up because it would be easier to get purchasers and also because I had agreed to give my vendor 60 perches and she herself did not want a block adjoining the petrol shed. There were in all 14 blocks out of which 2 are roadways. I could not choose my own block because I had to give the best blocks to the people who came to my help. Before entering into the agreement I went into the question of value but not the title. I might have examined the title too but I had to go on representation. I did not have much time because one Mr. E. L. Senanayake was also interested in buying this land. I have some experience in valuation of properties. Excluding my block the sale of blocks realised Rs. 434,725/-. So that I got my block for Rs. 15,275/-. If I sold the 11 blocks for 5 lakhs I would have got an extra sum of Rs. 50,000/- and my block free. Re the property at

Cotta Road the Agreement between Razeen and the vendors is dated 30th July, 1951. It was divided into 5 lots. One lot was sold on 30-8-51. Another on 25-9-51, and the third on 8-10-51, 4th on 16-10-52 and the last on 31-10-52. Razeens agreement was with one Mr. Ohlmus. Except to help Razeen there was no obligation on my part. To sell 5 lots there were some brokers who negotiated. The last 2 lots may have been sold by public auction.

**Re-Exd.**

- I did not employ brokers to sell the Alexandra Place property.
- 10 If I could have given vacant possession I could have got over a lakh for the Macarthy Road property. I bought half the estate in 1952 for about Rs. 85,000/-. In 1951 I was entitled to 1/2 share. For the Hultsdorf property I could have got about Rs. 125,000/-. My own house at Bambalapitiya at Glanaber Place I could have sold for Rs. 40,000/-. My wife's property at Wellawatta could have fetched about Rs. 30,000/- or Rs. 35,000/-. By selling these I could have got Rs. 370,000/-. My wife owned some bare land which could have brought about Rs. 20,000/- or Rs. 25,000/-. So, if all the
- 20 if necessary were sold I could have got about Rs. 450,000/-. One can always raise about half the value. Certainly 1/3rd easily.

No. 1  
Determination  
and Reasons  
under Section  
71 (2) of the  
Income Tax  
Ordinance—  
22-4-61.  
—(contd.)

Annex 'B'  
Evidence of  
H. V. Ram  
Iswera  
—(contd.)

## No. 2

**CASE STATED FOR THE OPINION OF THE SUPREME  
COURT**

(with annexes marked XI & XII)

No. BRA—303

**CASE STATED FOR THE OPINION OF THE HONOURABLE  
THE SUPREME COURT UNDER THE PROVISIONS OF  
SECTION 78 OF THE INCOME TAX ORDINANCE (CHAP. 242)  
UPON THE APPLICATION OF H. V. RAM ISWERA.**

1. At a meeting of the Board of Review held on 13th July 1961, and on adjournment on 18th July and 2nd August 1961 the appeal of H. V. Ram Iswera, (hereinafter called "the assessee") against an assessment to income tax for the years of assessment 1950—51 and 1951—52 was heard. The assessee appealed against the assessments made on the ground that the assessments included a sum of Rs. 66,331, the net profit made by the assessee's wife by the purchase and sale of 433 perches of buildable land situated in Alexandra Place, Colombo. 10

2. The assessee is a proctor and a notary public. For some time he was living with his family in a house at Hultsdorf which he had taken on rent. 20

3. The assessee and his wife and five daughters. Four of the children were students attending St. Bridgets Convent School which is in Alexandra Place.

4. Mrs. H. V. Ram Iswera, the assessee's wife, made inquiries from several brokers who came to her husband's office for the purchase of a building site in close proximity to St. Bridget's Convent. A broker named A. J. Boteju offered for sale a land in Alexandra Place in extent 433 perches. The owner of this land, Mrs. S. Thambyah, was willing to sell this land only to a person buying the entirety. 30

5. Mrs. H. V. Ram Iswera did not accept the offer made by A. J. Boteju as the land offered for sale was 433 perches and very much in excess of her requirements. Also, she did not have the money to pay the purchase price demanded by the owner for this large extent of land.

6. Thereafter Mrs. H. V. Ram Iswera met Mrs. V. Ramanathan, the sister-in-law of Mrs. S. Thambyah, the owner of this land, and successfully negotiated through Mrs. Ramanathan with the owner for the purchase of the land by Mrs. H. V. Ram Iswera for the sum of Rs. 450,000. 40

7. By deed No. 3684 of 3-3-1951, which has been attested by the assessee, Mrs. H. V. Ram Iswera agreed to purchase from Mrs. S. Thambyah the premises bearing assessment No. 81, Alexandra Place, Colombo, in extent A2. R2. P33, for the sum of Rs. 450,000.

No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62.  
—(contd.)

8. At the time of the execution of this deed Mrs. H. V. Ram swera's address is given in deed No.3684 as "Somi Siri," Kalubowila Road, Dehiwela.

10 9. At the time of execution of the Deed of Agreement No.3684 Mrs. H. V. Ram Iswera deposited a sum of Rs. 45,000 with Mrs. S. Thambyah and agreed to pay a further sum of Rs. 405,000 and complete the purchase of the land on or before 20-4-51.

10. It was agreed by the parties to the said agreement, inter alia, that —

20 (a) Mrs. S. Thambyah would convey the land to Mrs. H. V. Ram Iswera or her nominees on payment of the balance sum of Rs. 405,000. If Mrs. H. V. Ram Iswera failed to tender the sum of Rs. 405,000 on or before 20-4-51 and obtain a conveyance, the sum of Rs. 45,000 paid by her to Mrs. Thambyah would be forfeited as and by way of liquidated damages. Mrs. Ram Iswera would reconvey to Mrs. S. Thambyah a divided portion out of the land in extent 60 perches and Mrs. Ram Iswera would allow Mrs. Thambyah a right of user of a roadway to the divided portion. Mrs. H. V. Ram Iswera would have the roadways approved by the Colombo Municipal Council and constructed at her own expense.

30 11. The assessee and his wife did not have sufficient funds with them to deposit Rs. 45,000 with Mrs. S. Thambyah at the time the agreement No.3684 was executed. To make this deposit the assessee obtained a loan of Rs. 25,000 from Mr. K. C. Nadarajah and a loan of Rs. 20,000 from V. R. K. R. L. Letchumanan Chettiar.

12. At the time of the execution of the agreement No.3684 the assessee's wife was the owner of 3 houses situated at Macarthy Road, Wellawatte and Hultsdorf. All these houses were occupied and could not have been sold as it was not possible to give vacant possession to the buyers.

40 13. The assessee stated in his evidence before the authorised adjudicator : "I thought of making up the Rs. 450,000 by the sale of my wife's properties and if any money was short I would have

No. 2  
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for the opinion  
of the Supreme  
Court—  
14-7-62.  
—(contd.)

raised a loan. If all my wife's properties could not be sold I thought some portions of the land could be offered to my friends. The wife's properties which I intended to sell was the MacCarthy Road property, the property at Galle Road, Wellawatte and the one at Hultsdorf. The MacCarthy Road property had no offer as vacant possession could not be given. The position was the same with regard to the Wellawatte and Hultsdorf properties."

14. A sketch had been prepared by Mrs. H. V. Ram Iswera showing a division of the land into 14 lots marked A to O. Lots A to M are building sites and Lots N & O are reservations for roadways. This sketch had been prepared some time before 12-3-1951 to be shown to persons interested in buying a building site out of this land. 10

15. In a letter dated 12-3-1951 addressed to Mr. H. V. Ram Iswera by Mr. D. Seneviratne the writer of the letter states— "In reference to the conversation I had with you I have before me the rough plan of 81 Alexandra Place." By a survey and Plan No.109 dated 29-3-51 made by S. Rajendra, licensed surveyor, the division of the land as shown in this sketch had been demarcated on the ground. 20

16. By deed No.519 of 18-4-1951 attested by S. S. Kandiah, N.P., Mrs. Thambyah conveyed to Mrs. H. V. Ram Iswera for the sum of Rs. 78,525 lot A in extent A0. R1. P0, Lot B in extent AO. RO. P30, Lot C in extent AO, R1 P20 and the road reservations marked Lots N & O. The sum of Rs. 45,000 deposited with Mrs. S. Thambyah at the execution of the agreement No.3684 was set off against the purchase price of Rs. 78,525 and only the balance sum of Rs. 33,525 was paid.

17. Lot C in extent A0. R1. P20 was reconveyed by Mrs. H. V. Ram Iswera to Mrs. S. Thambyah. The other 9 building sites were not purchased by Mrs. Ram Iswera. The assessee negotiated the sale of these 9 lots and at the request of Mrs. Ram Iswera the owner Mrs. Thambyah conveyed these lots to others. 30

18. Mrs. H. V. Ram received from the persons to whom he building sites excepting lots A and B were conveyed the sum of Rs. 434,725. The market value of the two lots A and B which remained unsold by Mrs Ram Iswera was Rs. 87,040. The sum realised by Mrs. Ram Iswera by the sale of 10 lots and the value of the 2 lots which remained amount to Rs. 521,765 in the aggregate. 40

19. The difference in the amount realised by Mrs. Ram Iswera by the disposal of the 433 perches of land and the purchase price

paid by her to the owner Mrs. Thambyah was Rs. 71,765. The assessor has included this profit in the assessment of the income of the assessee.

No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62  
—(contd.)

20 20. The assessee appealed to the Commissioner of Inland Revenue against the assessment made of his income on the ground that the profit of Rs. 71,765 made by Mrs. H. V. Ram Iswera was not profit or income liable to be taxed under the Income Tax Ordinance. The appeal was heard by an authorised adjudicator. Before the authorised adjudicator it was agreed that the net profit was Rs. 66,331. Subject to this variation the assessment was confirmed.

21. The assessee appealed to the Board of Review against the decision of the authorised adjudicator. At the hearing of the appeal before the Board of Review it was submitted on behalf of the assessee that the profit made by Mrs. H. V. Ram Iswera on the sale of premises No.81 Alexandra Place, Colombo, was not a profit or income under Section 6 of the Income Tax Ordinance.

20 22. The assessor who supported the assessment on behalf of the Commissioner of Inland Revenue contended that the transactions entered into by Mrs. H. V. Ram Iswera in respect of 81, Alexandra Place was an adventure in the nature of trade and the profits made by her on these transactions was liable to be taxed under Section 6(1) (a).

23. We the members of the Board who heard the appeal held by our order dated 9-1-1962 that the profit of Rs. 66,331 made by Mrs. H. V. Ram Iswera was liable to be taxed under the Income Tax Ordinance as —

- 30 a) the said sum of Rs. 66,331 did not constitute a capital appreciation
- (b) the said sum Rs. 66,331 was a profit arising from an adventure in the nature of a trade,
- (A copy of the order made by the Board is attached hereto marked XI)

24 The decision of the Board was communicated to the assessee and the Commissioner of Inland Revenue by letter dated



No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62.  
—(contd.)

12th January, 1962. Being dissatisfied with the decision of the Board, the assessee by his communication on 3rd February 1962 (copy of which is attached hereto marked X2) applied to the Board 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. The amount of tax in dispute is Rs. 57,146.

1. (Sgd.) S. N. B. WIJAYAKOON
2. (Sgd.) E. R. S. R. COOMARASWAMY
3. (Sgd.) H. D. PERERA

*Members of the Board of Review,  
Inland Revenue.*

10

Colombo 1, 14th July, 1962.

ANNEX MARKED " X 1 "

**INCOME TAX APPEAL TO THE BOARD OF REVIEW**

MR. H. V RAM ISWERA  
No. BRA—303

*Assessment File No. 57/9043*

*Members of the Board :* Mr. S. N. B. Wijayekoon  
Mr. E. R. S. R. Coomaraswamy  
Mr. H. D. Perera

*Dates of hearing :* 13th July, 18th July and 2nd August 1961.

10 *Present for the Appellant :* Mr. S. Ambalavanar, Advocate with  
Mr. F. X. J. Rasanayagam, Advocate instructed by Mr. M. A. Hashim, Proctor.  
Appellant also present.

*Supporting the Assessment :* Mr. H. A. Mitrasena, Assessor.

*Decision of the Board :*

The assessee in this case Mr. H. V. Ram Iswera is a proctor and notary public. By deed No. 3684 dated 3rd March 1951, attested by the assessee, his wife, Mrs. H. V. Ram Iswera agreed to purchase from Mrs. S. Thambyah a land 2A. 2R. 33P (433 perches) in extent, situated in Alexandra Place, Colombo, for the sum of Rs. 450,000/-. Mrs. Ram Iswera paid a sum of Rs. 45,000/- as a deposit by way of earnest at the time this agreement was concluded. She also agreed to pay the balance sum of Rs. 405,000/- and complete the purchase of this land on or before 20-4-51. By this agreement Mrs. Thambyah agreed to convey the land to Mrs. Ram Iswera or her nominees on the payment of the balance Rs. 405,000/- of the purchase price, and Mrs. Ram Iswera agreed that if she failed to tender the balance sum of Rs. 405,000/- on or before 20-4-51 and obtain a conveyance of the land, the sum of Rs. 45,000/- paid at the time of execution, should be forfeited to the other party as and by way of liquidated damages. It was a further condition in this agreement that Mrs. Ram Iswera would re-convey to Mrs. Thambyah a divided portion out of this land, in extent 50 perches, and also allow to Mrs. Thambyah the right of use of a roadway to the divided portion. Mrs. Ram Iswera agreed to have the proposed roadway approved by the Municipal Council and to have the roadway constructed at her own cost and expense.

In order to pay the sum of Rs. 45,000/- by way of deposit the assessee obtained a loan of Rs. 25,000/- from Mr. K. C. Nadarajah

No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62.  
—(contd.)

Annex  
Marked XI  
(Decision of the  
Board of  
Review—  
9-1-62).

No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62.  
—(contd.)

Annex  
Marked X1  
(Decision of the  
Board of  
Review—  
9-1-62).  
—(contd.)

and another loan of Rs. 20,000/- from V. R. A. R. L. Letchuman Chettiar. On a date previous to 12-3-51 Mrs. Ram Iswera had a sketch prepared, sub-dividing into 14 lots the land which was the subject matter of the agreement of 3-3-51. By a survey and plan No. 109 dated 29-3-51, made by S. Rajendra, Licensed Surveyor, the division of the land, as shown in the sketch has been demarcated on the ground. Out of these 14 lots, marked A to O, in the said plan, Lots A to M are building sites and Lots N and O are reservations for roadways. By deed No. 519 of 18-4-51, attested by S. S. Kandiah, Notary Public, Mrs. Ram Iswera obtained a conveyance of Lot A, in extent 0A. 1R. 0P ; Lot B in extent 0A. 0R. 30P ; Lot C, in extent 0A. 1R. 20P. and the reservations for roadways Lots N and O. Lot E in extent 60 perches, was later re-conveyed by Mrs. Ram Iswera to Mrs. Thambyah in terms of the earlier agreement. The other building sites were not purchased by Mrs. Ram Iswera. At the request of Mrs. Ram Iswera the owner of the land conveyed three lots to Mrs. K. C. Nadarajah, Mrs. Balendra and Mrs. R. T. Nadarajah who were known to the assessee and his wife. The assessee Mr. Ram Iswera negotiated the sale of the remaining six lots to various persons and the owner Mrs. Thambyah conveyed these lots to these persons at the request of Mrs. Ram Iswera.

Mrs. Ram Iswera received from all persons to whom the building sites, excepting the two Lots A and B, were conveyed, the sum of Rs. 434,725/- which is only Rs. 15,275/- less than the consideration mentioned in the agreement No. 3684. Mrs. Ram Iswera therefore obtained for herself the two lots A and B in extent 70 perches, for which she had to pay Mrs. Thambyah only Rs. 15,275/-. The market value of these two lots A and B at that time was Rs. 87,040/-. The total amount realized by Mrs. Ram Iswera by the sale of 9 building lots to her nominees, the re-conveyance of one lot to Mrs. Thambyah and the reservation of 2 building lots for herself, was Rs. 521,765/-. The profit of Rs. 71,765/- made by Mrs. Ram Iswera has been included by the Assessor in the Assessment of Income Tax of Mr. Ram Iswera. The assessee appealed to the Commissioner of Inland Revenue against the assessment to Income Tax of the profit of Rs. 71,765/- made by Mrs. H. V. Ram Iswera by the sale of the land in lots. This appeal was heard by an Authorised Adjudicator. Before the Adjudicator the parties agreed that if this sum of Rs. 71,765/- was liable to tax, one-third of this profit should be taxed for the year of assessment 1950/51 and two-thirds for the year of assessment 1951 - 52. The Authorized Adjudicator determined that this sum of Rs. 71,765/- was a profit made in an adventure in the nature of trade and liable to be taxed. The assessee has appealed to this Board against that determination.

At the hearing of this appeal before the Board, the parties agreed that this assessment could be maintained only if the profit made by

Mrs. H. V. Ram Iswera was a profit made in trade within the meaning of Section 6(1) (a) of the Income Tax Ordinance. The word "trade" defined in section 2 of the Income Tax Ordinance includes every trade and manufacture and every adventure and concern in the nature of trade. The Assessor who appeared for the Commissioner of Inland Revenue contended that the profit was made by an adventure in the nature of trade and therefore taxable under Section 6(1) (a). Counsel for the assessee contended that this profit was only an appreciation of capital and not taxable. "In the case of an isolated transaction of purchase and re-sale of property, there is really no middle course. It is either an adventure in the nature of trade, or it is simply a case of sale and re-sale of property." These observations were made by Lord Justice Lawrence in *Leaming Vs. Jones* (15 TC 333) in a case in which there was a purchase of property followed by a single sale of the same property.

Counsel for the assessee referred to a large number of cases in which there was a single purchase of a property, followed by a single sale of the same property, in support of his contention, that the profit made by Mrs. Ram Iswera by the several sales was merely an appreciation of capital. *Tebaru, Johora Rubber Syndicate Ltd. vs. Farmer* (5 TC 658), *Ryall vs. Hoare* 1923 (2) KB 454 and the other cases referred to have decided that "the fact that a person has invested funds in the purchase of an investment which has subsequently appreciated and so has realized a profit on his purchase, does not make that profit liable to assessment."

The cases cited indicate that one or other of the following matters are relevant in determining whether a transaction is a transaction in the nature of a Trade :—

- (a) The nature and quantity of the subject matter. Thus if a person buys a large quantity of a consumable or perishable article much in excess of what is required for his own use, he could be said to be engaged in a transaction in the nature of a Trade.
- (b) Activity connected with the maturing of the subject matter.
- (c) Special knowledge of the participant.
- (d) Organisation involved in the transaction.

It should also be noted that a transaction can have more than one motivation one of which may be indicative of an activity in the nature of a Trade. In these circumstances, it seems necessary to determine the dominant motivation, and ascertain whether this motivation connotes an adventure in the nature of a Trade.

No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62  
—(contd.)

Annex  
Marked X1  
(Decision of the  
Board of  
Review—  
9-1-62)  
—(contd.)

No. 2  
Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62.  
—(contd.)

Annex  
Marked XI  
(Decision of the  
Board of  
Review—  
9-1-62.  
—(contd.)

Bearing the above characteristics of an adventure in the nature of a Trade in mind, one needs to examine the facts of this case with the intention of determining motivation, and if there is more than one motivation the dominant motivation in the transaction.

It would appear that Mr. & Mrs. Ram Iswera were at one time living in a rented house at Hulftsdorf. Mrs. Ram Iswera at this stage perhaps for very good reasons wished to leave the house at Hulftsdorf and was anxious to purchase a small block of land and build a house near St. Bridget's Convent where her children attended School. The motivation at this stage appears to have been the purchase of a block of land to build a house for residential purposes. Nevertheless an earlier offer to sell the very same block of land made by a Broker some time prior to the present transaction was turned down. The question, therefore, arises whether the subsequent agreement made with Mrs. Thambyah and the arrangement whereby blocks were to be disposed of to her nominees constitute an adventure in the nature of a trade. Let us, therefore, endeavour to determine whether any of the requisites of an adventure in the nature of a Trade which we have earlier set out apply to the facts of this case.

The first of these characteristics of an adventure in the nature of a Trade has to do with the nature and quantity of the subject matter. In this case it is true that ownership of 475 perches of land may well have been within the financial resources of the appellant and his wife. (they apparently already owned property valued at about this price). However, the question for determination is whether the purchase of this extent of land **WITHIN THE LIMITED PERIOD OF TIME STIPULATED IN THE AGREEMENT** was within the financial resources of the Appellant and his wife. It is obvious from the Appellant's own evidence that their resources would not have been enough to provide them with the assets they required to finance the transaction by means of loan capital. The sale of Mrs. Ram Iswera's properties might have provided adequate capital, but without vacant possession, the obtaining by sale of an amount adequate to meet the purchase price of these Alexandra Place premises, seemed quite remote. It, therefore, appears correct to infer that considering the nature and quantity of the subject matter that had to be purchased within the very limited period of time given, the transaction savoured of an adventure in the nature of a Trade. Moreover, in view of the insuperable difficulties which the Appellant and his wife would have had in the circumstances in finding the money required to complete the purchase of the premises within the required period of time, it is difficult to accept the position that Mr. Ram Iswera would have parted with Rs. 45,000/- of what constituted borrowed money by way of a deposit, unless the sale of this block was not dominant in his mind at the time he made

his deposit. The motivation of residence in that area may have also been in his mind and in Mrs. Ram Iswera's mind, but it is difficult to accept the contention that this was the dominant motivation in the transaction in the circumstances in which it took place.

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14-7-62.  
—(contd.)

Two other characteristics of an adventure in the nature of a Trade mentioned above also seem applicable in this transaction. There is evidence of a demarcation of the premises by a plan as far back as March 12th, 1951. There is reference to such a plan in a letter written by Mr. G. de Seneviratne which is filed of record (6A). This letter is written on 12-3-51 nine days after the agreement to purchase dated 3-3-51. Such an activity as the demarcation of the premises by a plan can be characterised as an activity connected with the maturing of the subject matter. Moreover, the preparation of such a plan indicates organisation involved in the transaction.

Annex  
Marked X1  
(Decision of the  
Board of  
Review—  
9-1-62).  
—(contd.)

We, therefore, feel that although Mrs. Ram Iswera may have been motivated by a desire to leave her home at Hulftsdorf and reside in a house near St. Bridget's Convent, nevertheless the dominant motivation of the transaction which she ultimately undertook appears to us to be a blocking up of the premises and the selling of these blocks so as to make a profit on the transaction, and obtaining a block for herself below the market value. We are, therefore, of opinion that the sum of Rs. 71,765/- does not constitute capital appreciation but has rightly been considered to be a profit arising from an adventure in the nature of a Trade and is liable to be taxed under Section 6(1) (a) of the Income Tax Ordinance.

One of the grounds mentioned in the appeal is that the computation of the profit made by Mrs. Ram Iswera is incorrect. It was agreed at the hearing before this Board that the profit made is the difference between the market value of the two buildings lots A and B conveyed by Mrs. Thambyah to Mrs. Ram Iswera and the price paid.

The assessment is, therefore, affirmed and the appeal is dismissed. We order that Appellant to pay a sum of Rs. 250/- as costs of this Appeal.

(Sgd.) S. N. B. WIJEYEKOON,  
Chairman.

Colombo 1, 9th January, 1962.

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Case Stated  
for the opinion  
of the Supreme  
Court—  
14-7-62..  
—(contd.)

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ANNEX MARKED " X 2 "  
INCOME TAX FILE NO. 57/9043

INCOME TAX APPEALS FOR THE YEARS 50/51 & 51/52  
BRA—303

Annex  
Marked X2  
(Letter from  
H. V. Ram  
Iswera to the  
Board of  
Review applying  
to state a case  
for the opinion  
of the Supreme  
Court—  
3-2-62).

To :—

The Board of Review constituted in terms of Section 74(1) of the Income Tax Ordinance.

I hereby apply in terms of Section 78(1) of the Income Tax Ordinance Chapter 242 that the Board be pleased to state a case on the question of law for the opinion of the Supreme Court. 10

The fee of Rs. 50/- in terms of the said action is enclosed herewith.

*The questions of law that arise are :—*

- (a) Whether the purchase and sale of the property situated in Alexandra Place, Colombo was a trade within the meaning of Section 6(1) (a) of the Income Tax Ordinance.
- (b) Whether on the evidence led and on the law the Board had misdirected itself in coming to the conclusion that the transaction was an adventure in the nature of trade and profits arising therefrom liable to tax under section 6(1) (a).
- (c) Whether on the facts of the case any reasonable person could have come to the conclusion that the transaction was an adventure in the nature of trade having reference to the intention of the Appellant's wife. 20
- (d) Whether there was evidence to support the finding arrived at by the Board of Review.

(Sgd.) H. V. RAM ISWERA,  
*Appellant.*

Colombo, 3rd day of February 1962.

**JUDGMENT OF THE SUPREME COURT**

*S. C. No. 3 of 1962*

*Income Tax Case Stated No. BRA—303*

**H. V. RAM ISWERA**

.....*Assessee-Appellant*

*Vs.*

**COMMISSIONER OF INLAND REVENUE**

.....*Respondent.*

*Present : L. B. de Silva, J., and Sri Skanda Rajah, J.*

10 *Counsel : H. V. Perera Q.C., with S. Ambalavanar and M. Amarasingham for the Assessee-Appellant.*

*A. C. Alles, Solicitor General with H. L. de Silva, Crown Counsel and Shiva Pasupati, Crown Counsel for the Commissioner of Inland Revenue-Respondent.*

*Argued on : 16th, 17th and 18th October, 1962.*

*Decided on : 13th November, 1962.*

**SRI SKANDA RAJAH, J.**

20 This is a Case Stated by the Board of Review under Section 78 of the Income Tax Ordinance at the request of the Assessee - appellant, whose communication is mentioned in the reference as X2. This communication does not correctly set out the question submitted for the opinion of this Court. The actual question we are called upon to consider is "whether, on the facts and circumstances proved in the case, the inference that the transaction in question was *an adventure or concern in the nature of trade* is in law justified."

30 The facts as found by the Board of Review are : the assessee, who is a Proctor and Notary, was at one time living with his wife and five daughters in a rented house at Hulftsdorf. Four of their five daughters were attending the St. Bridget's Convent. His wife made inquiries from brokers, who came to assessee's office, for the purchase of a building site close to St. Bridget's Convent. A broker named Boteju offered for sale a land in extent 433 perches situated in Alexandra Place and adjoining St. Bridget's Convent. The owner of the land Mrs. Thambyah was willing to sell this land only to a person buying the entirety. This offer was, however, turned down



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—(contd.)

as the land was very much in excess of her requirements and she did not have the money to pay the price demanded. Sometime later, by deed No. 3684 of 3-3-51, attested by the assessee himself, his wife, whose address is given in this deed as "Soma Siri," Kalubowila Road, Dehiwala, an agreement was entered into between the Assessee's wife and Mrs. Thambyah for the former to purchase the land for Rs. 450,000/- and the former deposited a sum of Rs. 45,000/-. It was agreed, inter alia, that Mrs. Thambyah would convey the land to Mrs. Ram Iswera (the assessee's wife) or her nominees on payment of the balance sum of Rs. 405,000/-. If Mrs. Ram Iswera failed to pay this sum on or before 20-4-1951 and obtain a conveyance, the sum of Rs. 45,000/- paid as deposit would be forfeited by way of liquidated damages. Mrs. Ram Iswera would reconvey to Mrs. Thambyah a divided portion out of the land in extent 60 perches and Mrs. Ram Iswera would allow Mrs. Thambyah a right of user of a roadway to that divided portion. Mrs. Ram Iswera would have the road-way approved by the Municipal Council and constructed at her own expense. Mrs. Ram Iswera had to borrow the Rs. 45,000/- to make the deposit. She had a house in Mc Carthy Road, another at Wellawatte and a third in Hultsdorf. They could not be sold as vacant possession could not be obtained. Soon after the agreement, and within nine days of it (i.e. before 12-3-1951), a sketch had been prepared showing a division of the land into fourteen lots—twelve building sites and two roadways—to be shown to prospective purchasers. A survey was made on 29-3-51 dividing the property according to the sketch. On 18-4-1951 Mrs. Thambyah conveyed three lots (A in extent 40 perches, B in extent 30 perches, C in extent 60 perches) and the road reservations (N and O) to Mrs. Ram Iswera for Rs 78,525/-. The deposit of Rs. 45,000/- was set off against this sum and only the balance Rs. 33,525/- was paid. Lot C was reconveyed to Mrs. Thambyah. The other nine building sites were conveyed by Mrs. Thambyah to Mrs. Ram Iswera's nominees for a total sum of Rs. 434,725/-, i.e. only Rs. 15,275/- less than the price of Rs. 450,000/- agreed upon for the entire land of 433 perches. Thus Mrs. Ram Iswera was able to get 70 perches of this valuable land in the coveted residential area of Cinnamon Gardens for only Rs. 15,275/-, whereas the market value was Rs. 87,040/-. But, before the authorised adjudicator it was agreed that the nett profit made by Mrs. Ram Iswera out of this transaction was Rs. 66,331/-.

Both parties rely on the findings of the Board of Review on the facts.

The Board of Review has accepted the contention of the Department of Inland Revenue that this transaction was an adventure or concern in the nature of trade within the meaning of Section 6(1) (a) of the Income Tax Ordinance.

Counsel for the assessee has submitted that the dominant intention of the assessee's wife was to find a residence near St. Bridget's Convent. This question was considered with great care by the Board of Review, who have rejected this submission and come to the conclusion that the dominant intention connotes an adventure in the nature of trade.

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—(contd.)

We are indebted to both Counsel for the able manner in which the arguments were presented and for the citations.

10 The learned Solicitor-General cited the case of Naidu & Co. v. the Commissioner of Income Tax : 1959 A.I.R. 359 (S.C.) and drew our attention to a passage at pages 362 and 363 in the judgment of Gajendragadkar, J., which, if I may so with great respect, admirably sets down the scope and the nature of the power which this Court has, upon a Case Stated, to reject conclusions reached by the Board of Review on questions of fact and on questions of mixed law and fact. Though the passage in question has been quoted by my Brother H.N.G. Fernando J, in the case of Mahawitana v. Commissioner of Inland Revenue : 64 N.L.R. 217, I consider it  
20 necessary to set it down in this case too italicizing the portion relevant for the consideration of the arguments in this case, which are based on questions of mixed law and fact unlike the 64 N.L.R. 217 case :—

30 “There is no doubt that the jurisdiction conferred on the High Court by Section 66(1) is limited to entertaining references involving questions of law. If the point raised on reference relates to the construction of a document of title or to the interpretation of the relevant provisions of the statute, it is a pure question of law ; and in dealing with it, though the High Court may have due regard for the view taken by the Tribunal, its decision would not be fettered by the said view. It is free to adopt such construction of the document or the statute as appears to it reasonable. In the same case the point sought to be raised on reference may turn out to be a pure question of fact, and if that be so, the finding of fact recorded by the Tribunal must be regarded as conclusive in proceedings under Section 66(1). If, however, such a finding of fact is based on an inference drawn from primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within narrow limits. The Assesse or revenue can contend that the inference has been drawn  
40 on considering inadmissible evidence or after excluding admissible and relevant evidence ; and, if the High Court is satisfied that the inference is the result of improper admission or exclusion of evidence, it would be justified in examining the correctness of the conclusion. It may also be open to the party to challenge a conclusion of fact drawn by the Tribunal on the ground that it is

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not supported by any legal evidence; or that the impugned conclusion drawn from the relevant facts is not possible, and if such a plea is established, the Court may consider whether the conclusion in question is not ~~not~~ <sup>and</sup> perverse should not, therefore, be set aside. It is within these narrow limits that the conclusions of fact recorded by the Tribunal can be challenged on the ground that they are based on misappreciation of evidence. *There is yet a third class of cases in which the assessee or the revenue may seek to challenge the correctness of the conclusion reached by the Tribunal on the ground that it is a conclusion on a question of mixed law and fact. Such a conclusion is no doubt based upon the primary evidentiary facts, but its ultimate form is determined by the application of legal principles. The need to apply the relevant legal principles tends to confer upon the final conclusion its character of a legal conclusion and that is why it is regarded as a conclusion on a question of mixed law and fact. In dealing with findings on questions of mixed law and fact the High Court would no doubt have to accept the findings of the Tribunal on the primary questions of fact ; but it is open to the High Court to examine whether the Tribunal has applied the relevant legal principles correctly or not; and in that sense, the scope of inquiry and the extent of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of Law.*

In this case as mentioned earlier, the assessee challenges the correctness of the conclusion reached by the Board of Review on the basis that it is a conclusion on a question of mixed law and fact. Therefore, as indicated in the passage italicized above, we have to examine whether the Board of Review has applied the relevant legal principles correctly or not.

The same Judge expressed himself as follows at page 364, “It is patent that the clause ‘adventure in the nature of trade’ postulates the existence of certain elements in the adventure which in law would invest it with the character of a trade or business.”

At p. 366 he said “When S. 2. Sub. S. (4) refers to an adventure in the nature of trade it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not all of them ; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade.”

In that case it was also indicated : “It is, however, impossible to evolve any formula which can be applied in determining the character of isolated transactions which come before the Courts in tax

proceedings. The decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule or test and must in every case depend upon all the relevant facts and circumstances. It would besides be inexpedient to make any attempt to evolve such a rule or formula. In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction ; and so, though the Court may attempt to derive some assistance from decisions bearing on this point, it cannot seek to deduce any rule from them and mechanically apply it to the facts before it.”

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Court—  
13-11-52.  
—(contd.)

In the case of *Edwards V. Bairstow* 1956 A.C. 14 at 29 Viscount Simonds expressed himself as follows :— “if it is a characteristic of an adventure in the nature of trade that there should be an ‘organization’ I find that characteristic present here . . . . . I find ‘activities which led to the maturing of the asset to be sold’ and the search for opportunities for its sale, and conspicuously, I find that the nature of the asset lent itself to commercial transactions.”

In the case of *Saroj Kumar Mazmudar v Commissioner of Income Tax* : 1959 A.I.R. 1252 (S.C.) following 1959 A.I.R. 359 it was held that no general principles or universal tests could be laid down. Each case must be determined on the total impression created on the mind of the Court by all the facts and circumstances disclosed in the particular case.

The facts accepted by the Board of Review establish that :—

1. The assessee or his wife had no money to pay even the deposit. That sum had to be borrowed.
2. The transaction had to be concluded between 3-3-51 and 20-4-51, a comparatively short period of time.
3. There was preparation, organization and activity : within a few days of the agreement of 3-3-51 a sketch was prepared to be shown to prospective purchasers. Soon thereafter a survey plan was made dividing the land into 14 lots, twelve building sites and two road ways, i.e., the activity led to the maturing of the assets.
4. The quantity or extent purchased was far in excess of the alleged requirements of the assessee’s wife.
5. There was considerable profit from the transaction within a short time, i.e. the presence of profit motive, which is a characteristic of trade.

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—(contd.)

What is the “total impression” or “picture” that these facts would leave on the mind of any reasonable person? Having considered all these matters in conjunction with the evidence that Mrs. Ram Iswera had a desire to live near St. Bridget’s Convent for the sake of education of the four girls attending that institution the Board of Review arrived at the conclusion that the dominant motive or intention was not this desire of hers and that the transaction presented a “picture” of an adventure in the nature of trade.

When learned Counsel for the assessee-appellant was reading paragraph 8 of the case stated I asked him if it was Mrs. Ram Iswera’s dominant desire to live near St. Bridget’s Convent for educating her daughters why she had shifted from Hulftsdorp to Dehiwala before 3-3-1951, the date of the agreement, i.e., further away from St. Bridget’s Convent than Hulftsdorp, and he ventured the explanation that she may have been at Dehiwala temporarily and the Notary might have been under the impression that he should give that address. But, later on I pointed out that it was the assessee himself, her husband, a Proctor and Notary, who attested that agreement. If Mrs. Ram Iswera was residing only temporarily at Dehiwala that fact would have been known to the assessee and he would not have given that as her address in the agreement. Also there is no indication of any attempt being made at any time to eject the tenant from the house in McCarthy Road, which is also in Cinnamon Gardens and near St. Bridget’s Convent. One would expect that to be done if the dominant motive or intention was that alleged by the assessee.

These circumstances also go to support the finding of the Board of Review, whose order indicates that they have applied the relevant legal principles correctly.

For these reasons, I would answer the question submitted for our consideration in the affirmative.

The Assessee-Appellant will pay Rs. 750/- to the respondent as costs.

• (Sgd. P. SRI SKANDA RAJAH  
*Puisne Justice*)

L. B. DE SILVA, J.

I agree  
(Sgd.) LENOARD B. DE SILVA  
*Puisne Justice*

**APPLICATION FOR CONDITIONAL LEAVE TO APPEAL  
TO THE PRIVY COUNCIL**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for  
Conditional Leave to Appeal to Her  
Majesty the Queen in Council.

H. V. Ram Iswera of 79, Alexandra Place, Colombo-7.

.....*Assessee-Petitioner.*

10 S.C. No. 3 of 1962  
BRA—303

*Vs.*

The Commissioner of Inland Revenue.

.....*Respondent-Respondent.*

and

H. V. Ram Iswera of 79, Alexandra Place, Colombo-7.

.....*Assessee-Appellant.*

*Vs.*

The Commissioner of Inland Revenue.....*Respondent.*

20 *To :*

HIS LORDSHIP THE HONOURABLE THE CHIEF JUSTICE AND THE  
OTHER JUDGES OF THE SUPREME COURT OF CEYLON.

This 30th day of November, 1962.

The petition of the Assessee-Petitioner being the Assessee-Appellant in S. C. 3 of 1962 / BRA 303 abovenamed appearing by his Proctor M. A. Hashim states as follows :—

1. The Assessee-Petitioner was the appellant and the Commissioner of Inland Revenue was the Respondent in Supreme Court (Income Tax) No. 3 of 1962/BRA 303.

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Conditional  
Leave to Appeal  
to the Privy  
Council—  
30-11-62.  
—(contd.)

2. Your Lordships Court made order on 13th November 1962 in the above mentioned case 3 of 1962 (case stated for the opinion of the Supreme Court) confirming the decision of the Board of Review and ordering the Petitioner to pay costs in a sum of Rs. 750/-.

3. That feeling aggrieved with the order of Your Lordships' Court the Petitioner is desirous of appealing therefrom to Her Majesty the Queen in Council.

4. That the said order made on 13th November, 1962 under Section 78 (6 & 7) of the Income Tax Ordinance, Chapter 242 of the Legislative enactments of Ceylon (Revised Edition 1956) is in terms of Section 78 (8) deemed to be a final judgment of the Supreme Court in a civil action between the Petitioner and the Commissioner of Inland Revenue and the value of the matter in dispute is a sum of Rs. 57,146/-. 10

5. The Petitioner has within fourteen days from the date of the said judgment given the Respondent notice of the intended application for leave to appeal to Her Majesty in Council by :—

(a) by personal delivery on 20th November 1962.

(b) by registered post on 21st November, 1962, and the Respondent Commissioner of Inland Revenue has acknowledged receipt of the said notice by letter dated 21st November, 1962. 20

6. Wherefore the Assessee Petitioner prays :—

(a) that Your Lordships' Court be pleased to grant Conditional Leave to Appeal to Her Majesty the Queen in Council from the order of Your Lordships' Court pronounced on the 13th day of November, 1962.

(b) for costs and

(c) for such other and further relief as to this Court shall seem meet.

(Sgd.) M. A. HASHIM, 30  
*Proctor for Assessee Petitioner.*

No. 5

MINUTE OF ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

H. V. Ram Iswera of No. 79, Alexandra Place, Colombo 7.
..... Assessee-Appellant.

10 S.C. 3 of 1962
Income Tax Case Stated
BRA—303 Vs.

The Commissioner of Inland Revenue, Colombo
..... Respondent.

and

H. V. Ram Iswera of No. 79, Alexandra Place, Colombo 7.
..... Assessee-Petitioner.
(Appellant)

20 S.C. Application
No. 505 of 1962 Vs.

The Commissioner of Inland Revenue, Colombo.
..... Respondent.

30 The application of H. V. Ram Iswera of No. 79, Alexandra Place, Colombo 7, for Conditional Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 13th day of November, 1962 in S.C. 3 of 1962, Income Tax Case Stated BRA-303, having been listed for hearing and determination before the Honourable Miliani Claude Sansoni, Puisne Justice, and the Honourable Ponnuduraisamy Sri Skanda Rajah, Puisne Justice, in the presence of H. V. Perera Esquire, Q.C. with S. Ambalavanar Esquire, Advocate, for the Assessee-Petitioner, and M. Kanagasundaram Esquire, Crown Counsel, for the Respondent, order has been made by Their Lordships on the 16th day of January, 1963 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) J. W. SUBASINGHE,
Registrar of the Supreme Court.

No. 5
Minute of
Order granting
Conditional
Leave to appeal
to the Privy
Council—
16-1-63.



No. 6  
Application  
for Final Leave  
to appeal to  
The Privy  
Council—  
28-1-63.

No. 6

APPLICATION FOR FINAL LEAVE TO APPEAL TO  
THE PRIVY COUNCIL

IN THE SUPREME COURT OF CEYLON

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

H. V. RAM ISWERA OF 79, ALEXANDRA PLACE,  
COLOMBO-7 ..... *Assessee-Petitioner.*

*Vs.*

THE COMMISSIONER OF INLAND REVENUE, COLOMBO 10  
..... *Respondent-Respondent.*

S.C. Application No. 505  
of 1962. *and*

H. V. RAM ISWERA OF 79, ALEXANDRA PLACE,  
COLOMBO-7..... *Assessee-Appellant.*

S.C. No. 3 of 1962  
Income Tax Case Stated  
BRA—303 *Vs.*

THE COMMISSIONER OF INLAND REVENUE COLOMBO 20  
..... *Respondent.*

*To:*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES  
OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND  
OF CEYLON

On this 28th day of January 1963.

The humble petition of Harichandra Veerasingham Ram Iswera the Assessee-Appellant abovenamed appearing by Mohamed Ajwad Hashim, his Proctor states as follows :—

1. That the Assessee-Appellant on the 16th day of January, 1963, obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 13th day of November 1962. 30

2 That the Assessee-Appellant has in compliance with the conditions on which such leave was granted given security in the sum of Rupees Three Thousand (Rs. 3000/-) as hereinafter set out for the prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or Her Majesty in Council ordering the Appellant to pay the respondent the costs of the appeal.

No. 6  
Application  
for Final Leave  
to appeal to  
The Privy  
Council.—  
28-1-63.  
—(contd.)

10 3. The Assessee-Appellant has deposited the said sum of Rupees Three Thousand (Rs. 3,000/-) with the Registrar of this Honourable Court on the 24th day of January 1963, and executed a bond in favour of the said Registrar on the 26th day of January, 1963, hypothecating the said sum with the said Registrar and has also paid to him the necessary fees for transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the record of this case.

4. Notice of the application for final leave to appeal to Her Majesty in Council with copy of this petition has been given to the respondent.

20 Wherefore the Assessee-Appellant prays :—

- (a) That he be granted final leave to appeal against the said judgment of this Court dated 13th day of November, 1962, to Her Majesty the Queen in Council, and
- (b) for such other and further relief in the premises as to Your Lordships' Court shall seem meet, fit and proper.

(Sgd.) M. A. HASHIM,  
*Proctor for Assessee-Appellant*

No. 7  
Minute of  
Order granting  
Final Leave to  
appeal to The  
Privy Council -  
23-5-63.

**MINUTE OF ORDER GRANTING FINAL LEAVE TO  
APPEAL TO THE PRIVY COUNCIL**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Final Leave to appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

H. V. RAM ISWERA OF NO. 79, ALEXANDRA PLACE,  
COLOMBO-7..... *Assessee-Appellant.*

S.C. Application 10  
No. 30 of 1963. Vs.

THE COMMISSIONER OF INLAND REVENUE, COLOMBO.  
..... *Respondent.*

The application of H. V. Ram Iswera of No. 79, Alexandra Place, Colombo 7, for Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 13th day of November, 1962 in S.C. 3 of 1962, Income Tax Case Stated BRA—303, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Puisne Justice, and the Honourable Thusew Samuel Fernando, Q.C., Puisne Justice, in the presence of 20  
H. V. Perera Esquire, Q.C., with S. Ambalavanar Esquire, Advocates for the Assessee-Petitioner, and M. Kanagasundaram Esquire, Crown Council, for the Respondent, order has been made by Their Lordships on the 23rd day of May, 1963 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) J. W. SUBASINGHE,  
*Registrar of the Supreme Court.*

**PART II**  
**EXHIBITS**



**DEED OF AGREEMENT NO. 3684**A2  
Deed of  
Agreement  
No. 3684—  
3-3-51.

PRIOR REGISTRATION :— Colombo A 307/79.

NO. 3684.

THIS INDENTURE made and entered into at Colombo on this Third day of March One Thousand Nine Hundred and Fifty One between Sivanandam Thambyah widow of Murugesar Thambyah of No. 36/1 Horton Place, in Colombo (hereinafter called and referred to as the said Vendor (which term or expression as herein used shall wherever the context so requires or admits mean and include the said Vendor her heirs executors and administrators) of the First or one part and Mudiyanseilage Lily Harriet Perera of "Somi Siri" Kalubowila Road Dehiwala hereinafter called and referred to as the said Purchaser (which term or expression as herein used shall wherever the context so requires or admits mean and include the said Purchaser her heirs executors administrators and assigns or her nominee or nominees) of the Second or other Part.

WHEREAS the said Vendor is seized and possessed of or otherwise well and sufficiently entitled to the land and premises with the buildings thereon and more fully and particularly described in the schedule hereto.

AND WHEREAS the said Purchasers has agreed to purchase the said land and premises together with the buildings thereon more fully described in the schedule hereto at or for the price or sum of Rupees Four Hundred and Fifty Thousand (Rs. 450,000/-) and the said Vendor has agreed to sell the same to the said Purchaser or her nominee or nominees upon the terms conditions and covenants hereinafter set forth.

NOW THIS INDENTURE WITNESSETH AND IT IS HEREBY agreed between the Parties hereto as follows :—

1. The said Purchaser hereby agrees to buy the said land and premises together with the buildings thereon more fully described in the said schedule hereto together with all and singular the rights privileges easements servitudes and appurtenances whatsoever thereto belonging or appurtenant thereto or used or enjoyed therewith at or for the price or sum of Rupees Four hundred and fifty thousand (Rs. 450,000/-) to be paid in manner following that is to say :— a sum of Rupees Forty Five thousand (Rs. 45,000/-) to be paid as a deposit by way of earnest to the said Vendor at the execution hereof (the receipt whereof the said Vendor doth hereby ex-

A2  
Deed of  
Agreement  
No. 3684—  
3-3-51.  
—(contd.)

pressly admit and acknowledge) and the balance sum of Rupees Four hundred and five thousand (Rs. 405,000/-) to be paid on or before the 20th day of April, 1951 on the execution of the Deed of Transfer in favour of the said Purchaser or her nominee or nominees and the said Vendor agrees to sell and transfer the said land and premises with the buildings thereon to the said Purchaser or her nominee or nominees on or before the 20th day of April, 1951 at the price or sum of Rupees Four hundred and fifty thousand (Rs. 450,000/-) upon the purchaser or her nominee or nominees tendering the balance sum of Rupees Four hundred and five thousand (Rs. 405,000/-) on or before the 20th day of April, 1951. 10

2. Upon the balance purchase price of Rupees Four hundred and five thousand (Rs. 405,000/-) being tendered on or before the 20th day of April 1951 as aforesaid the said Vendor shall thereupon by a valid and effectual deed convey and transfer the said land and premises fully described in the said schedule hereto to the said Purchaser or her nominee or nominees free from encumbrance save and except lease bearing No. 461 dated 5th May, 1949, and attested by S. Somanathan of Colombo Notary Public.

3. The Vendor shall cause her sons Nadarajah and Murugesar and her daughters Mahadevi and Managaleswari with the consent and concurrence of their respective husbands to join in the execution of the Deed of Transfer in favour of the Purchaser or her nominee or nominees and to transfer all their right title and interest, if any, in to and upon the said land and premises in the schedule hereto fully described to the Purchaser or her nominee or nominees. 20

4. The Purchaser's Lawyer is fully satisfied with the title to the said land and premises and accepts it as good and marketable title subject however to clause 3 herein contained. Such deed of conveyance shall be subject to the approval of the Vendor's Lawyer and be prepared by the said Purchaser's Notary and the entire cost thereof shall be borne by the Purchaser. 30

5. The Purchaser shall and will sell back to the Vendor a divided portion of land midway as square as possible of the extent of sixty perches near the place marked with a cross on the blue print plan drawn by S. J. Alles Architect dated 12th December 1949 and filed herewith and also allow the said Vendor and her heirs executors administrators and assigns the right of use of a roadway leading to the aforesaid allotment of land purchased by the Vendor. The said purchaser shall enter into the necessary covenants with the Municipal Authorities to have the road-way approved and lay it out at her own cost and expense. 40

6. The said Purchaser agrees to proceed with the action bearing No. 325/Z.L. of the District Court of Colombo and will not hold the said Vendor liable nor responsible for any delay in ejecting the Lessee under the said Indenture of Lease No. 461.

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Deed of  
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No. 3684—  
3-3-51.  
—(contd.)

7. In the event of the said Purchaser failing neglecting or refusing to tender the balance purchase price or sum of Rupees Four hundred and five thousand (Rs. 405,000/-) on or before the 20th day of April 1951, the deposit sum of Rupees Forty five thousand (Rs. 45,000/-) paid by the said Purchaser to the said Vendor at the execution hereof shall be forfeited to the said Vendor as and by way of liquidated damages mutually ascertained and agreed upon and not by way of penalty.

8. In the event of the said Vendor failing neglecting or refusing to execute a deed of conveyance in the manner aforesaid in favour of the Purchaser the said Purchaser being ready and willing to complete the said purchase as aforesaid then and in such case the said Vendor shall repay and return to the said Purchaser the said sum of Rupees Forty Five Thousand (Rs. 45,000/-) paid at the execution hereof and also pay to the said Purchaser a further sum of Rupees Forty Five Thousand (Rs. 45,000/-) as liquidated damages and not by way of penalty. Provided always that the said Purchaser shall be entitled to exercise the right to compel specific performance of this agreement without claiming the damages as provided in this paragraph.

9. The said Vendor shall provide the said Purchaser or her nominee or nominees with a full and complete set of title deeds plans and other documents pertaining to the said land and premises or certified copies thereof which may be called for by the Lawyer of the said Purchaser.

30 IN WITNESS WHEREOF the said Parties do set their respective hands hereunto and to two others of the same tenor and date as these presents at Colombo on this third day of March One thousand and nine hundred and fifty one.

#### THE SCHEDULE ABOVE REFERRED TO :—

40 All that a lotment of land with the buildings thereon called "Haarlem House" presently known as "Hirst Green" bearing assessment No. 81 situated at Alexandra Place in Cinnamon Gardens within the Municipality and District of Colombo Western Province bounded on the North East by land described in Plan No. 72326 (the property of Henry Dias) on the South East by land lately belonging to the Crown on the South West by land described in Plan No. 73657 (the property of A. O. Joseph) and on the North



A2  
Deed of  
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3-3-51.  
—(contd.)

West by reservation for a road Circular Road now called Alexandra Place containing in extent Two Acres Two Roods and Thirty Three Perches (A2. R2. P33) according to title plan No. 73658 dated 21st November 1868 authenticated by Captain A. B. Fyers R. E. Surveyor General.

Signed in the presence of us :—

(Sgd.) C. H. FERNANDO

(Sgd.) V. RAMANATHAN

(Sgd.) S. TAMBYAH

(Sgd.) H. V. RAM ISWERA

*Notary Public*

10

Signed by the said Mudiyanseage Lily Harriet Perera at Colombo on this Third day of March One thousand nine hundred and fifty One in the presence of :—

(Sgd.) L. H. PERERA

Witnesses :

(Sgd.) H. ARGIRIS JINADASA

(Sgd.) H. C. SPENCER

(Sgd.) H. V. RAM ISWERA

*Notary Public*

20

I, Harichandra Veerasingham Ram Iswera of Colombo Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the said Sivanandam Tambyah the executant within named who has signed as "S. Tambyah" in the presence of Charles Hubert Fernando and Vamadevi Ramanathan both of Cinnamon Gardens Colombo who have signed as "C. H. Fernando" and "V. Ramanathan" respectively the subscribing witnesses thereto all of whom are known to me the same was signed by the said executant by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo on this Third day of March One thousand Nine hundred and fifty One.

30

I further certify and attest that both in the original and duplicate page 2 lines 18, 23, 27, and 30 "30th" deleted and "20th" substituted, page 3 line 24 "annexed" deleted and "filed" substituted, page 4 line 8 "30th" deleted and "20th" substituted and line 14 "in the manner aforesaid" interpolated and in the original page 3 line 8 "Transfer" typed on erasure and page 5 line 16 "Joseph" typed on erasure and in the duplicate page 3 line 29 "own" typed on erasure before the instrument was read over and signed as aforesaid

40

and that the within named consideration was paid by cheque No. FQ 925401 dated this day and drawn on the National Bank Colombo and that the duplicate of this instrument bears one stamp of the value of Rs. 10/- and the original a stamp of Re. 1/- and that the said stamps were supplied by me.

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Deed of  
Agreement  
No. 3684—  
3-3-51.  
—(contd.)

*Date of Attestation*  
3rd March, 1951

(Sgd.) H. V. RAM ISWERA  
*Notary Public*

( S E A L )

10 I, Harichandra Veerasingham Ram Iswera of Colombo Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the said Mudiyansele Lily Harriet Perera the executant within named who has signed as "L. H. Perera" in the presence of Hondamuni Argiris Jinadasa and Henry Chelva-durai Spencer both of Colombo who have signed as "H. Argiris Jinadasa" and "H. C. Spencer" respectively the subscribing witnesses thereto all of whom are known to me the same was signed by the said executant by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present  
20 at the same time at Colombo on this Third day of March One thousand Nine hundred and Fifty One.

*Date of Attestation:*  
3rd March, 1951.....

(Sgd.) H. V. RAM ISWERA  
*(Notary Public)*

( S E A L )

True Copy

(Sgd.) Illegibly  
*Notary Public*

30 Colombo, 28-5-1957.

**DEED OF TRANSFER NO. 519**

PRIOR REGISTRATION :— Entire Land A 307/79.

**NO. 519**

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
Sivanandam Thambyah widow of Murugesar Thambyah of  
No. 36/1, Horton Place in Colombo, Mahadevi Nadarajah wife of  
Nadeswaran Nadarajah (formerly known as Mahadevi Muttsamy)  
the said Mahadevi Nadarajah acting herein with the consent and  
concurrence of her husband the said Nadeswaran Nadarajah as is  
testified by his being a party to and executing these presents, 10  
Thambyah Nadarajah of No. 18 Bagatalle Road in Colombo,  
Mangaleswari Somanathan wife of Sivasithamparam Somanathan  
of "Villula" Torrington Place in Colombo the said Mangaleswari  
Somanathan acting herein with the consent and concurrence of her  
husband the said Sivasithamparam Somanathan as is testified by  
his being a party to and executing these presents and Thambyah  
Murugesar of "Villula" Torrington Place in Colombo.

— : SEND GREETING : —

Whereas the said Sivanandam Thambyah is under and by virtue 20  
of Deed No. 4038 dated 30th June 1947 and attested by John Wilson  
of Colombo Notary Public seised and possessed of or otherwise  
well and sufficiently entitled to the land and premises with the  
buildings thereon and more fully and particularly described in the  
first schedule hereto.

And Whereas the said Sivanandam Thambyah by Deed No. 3684  
dated 3rd March, 1951 and attested by H. V. Ram Iswera of Colombo  
Notary Public has agreed with Mudiyanse Lage Lily Harriet Perera  
of "Somi Siri" Kalubowila Road Dehiwala for the absolute sale 30  
and conveyance unto the said Mudiyanse Lage Lily Harriet Perera  
or her nominee or nominees the said land and premises more fully  
described in the said first schedule hereto at or for the price or  
sum of Rupees Four Hundred and Fifty Thousand (Rs. 450,000/-)  
of lawful money of Ceylon.

And Whereas the said Mudiyanse Lage Lily Harriet Perera has  
caused the said land and premises to be surveyed and divided into  
14 lots marked A to O according to Plan No. 109 dated 29th March  
1951 and made by S. Rajendra Licensed Surveyor.

And Whereas the said Mudiyanse!age Lily Harriet Perera has called upon the said Sivanandam Thambyah to execute in her favour a conveyance and transfer of the said lots marked A, B, C, N, and O and more fully described in the second schedule hereto.

R7  
Deed of  
Transfer  
No. 519—  
2-5-51.  
—(contd.)

And Whereas the said Mudiyanse!age Lily Harriet Perera has called upon the said Mahadevi Nadarajah the said Mahadevi Nadarajah acting herein with the consent and concurrence of her husband the said Nadeswaran Nadarajah as is testified by his being a party to and executing these presents, Thambyah Nadarajah,  
10 Mangaleswari Somanathan acting herein with the consent and concurrence of her husband the said Sivasithamparam Somanathan as is testified by his being a party to and executing these presents and Thambyah Murugesar to enter into these presents for the better manifestation of title to the said lands and premises more fully described in the second schedule hereto and they have consented to do so.

NOW KNOW YE AND THESE PRESENTS WITNESS THAT the said Sivanandam Thambyah in pursuance of the said agreements and in consideration of the said sum of Seventy eight thousand five hundred and twenty five (Rs. 78,525/-) of lawful  
20 money of Ceylon well and truly paid to the said Sivanandam Thambyah by the said Mudiyanse!age Lily Harriet Perera ( the receipt whereof the said Sivanandam Thambyah doth hereby expressly admit and acknowledge) doth hereby sell assign transfer set over and assure unto the said Mudiyanse!age Lily Harriet Perera her heirs executors administrators and assigns the said lands more fully described in the second schedule hereto together with all rights privileges easements servitudes advantages and appurtenances whatsoever to the said lands and premises belonging or  
30 appertaining or used or enjoyed therewith or reputed or known to be part parcel or member of the same or held to belong or be appurtenant thereto and all the estate right title interest property possession benefit claim and demand whatsoever of the said Sivanandam Thambyah of in to upon or out of the said lands and premises and every part of portion thereof but the vendor doth not give vacant possession of the premises sold.

TO HAVE AND TO HOLD the said lands and premises fully described in the said second schedule hereto and hereby sold and conveyed or expressed or intended so to be unto the said Mudiyanse!age Lily Harriet Perera her heirs executors administrators  
40 and assigns absolutely and for ever.

And the said Sivanandam Thambyah doth hereby for herself and her heirs executors and administrators covenant promise and declare with and to the said Mudiyanse!age Lily Harriet Perera her

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Deed of  
Transfer  
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2-5-51.  
—(contd.)

heirs executors administrators and assigns that the said lands and premises hereby sold and conveyed are free from all encumbrances whatsoever save and except lease Bond No. 461 dated 5th day of May 1949 and attested by S. Somanathan of Colombo Notary Public and that the said Sivanandam Thambyah hath not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said lands and premises and every part or portion thereof are is can shall or may be impeached or encumbered in title charge estate or otherwise howsoever and that the said Sivanandam Thambyah and her aforewritten shall and will at all times hereafter warrant and defend the title to the same and every part or portion thereof unto the said Mudiyansele Lily Harriet Perera her heirs executors administrators and assigns against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said Mudiyansele Lily Harriet Perera or her aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things for the better and more perfectly assuring the said lands and premises hereby sold and conveyed and every part or portion thereof unto the said Mudiyansele Lily Harriet Perera and her aforewritten as by her or her aforewritten shall or may be reasonably required.

And these presents further witness that for the better manifestation of the title to the said lands and premises described in the second schedule hereto the said Mahadevi Nadarajah acting herein with the consent and concurrence of her husband the said Nadeswaran Nadarajah, Thambyah Nadarajah, Mangaleswari Somanathan acting herein with the consent and concurrence of her husband the said Sivasithamparam Somanathan and Thambyah Murugesar do hereby assign convey transfer set over and assure unto the said Mudiyansele Lily Harriet Perera her heirs executors administrators and assigns all their right title interest if any in to and upon the said lands and premises described in the second schedule hereto.

And the said Nadeswaran Nadarajah doth hereby consent and agree to the said Mahadevi Nadarajah making the transfer and conveyance herein contained.

And the said Sivasithamparam Somanathan doth hereby consent and agree to the said Mangaleswari Somanathan making the transfer and conveyance herein contained.

IN WITNESS WHEREOF the said Sivanandam Thambyah, Mahadevi Nadarajah, Nadeswaran Nadarajah and Thambyah Nadarajah have set their respective hands hereunto and to two

others of the same tenor and date as these presents at Colombo on this Eighth day of April One thousand nine hundred and fifty One.

R7  
Deed of  
Transfer  
No. 519—  
2-5-51  
—(contd.)

THE FIRST SCHEDULE ABOVE REFERRED TO:—

- All that allotment of land with the buildings thereon called “Haarlem House” presently known as “Hirst Green” bearing assessment No. 81 situated at Alexandra Place in Cinnamon Gardens within the Municipality and District of Colombo Western Province bounded on the north east by land described in Plan No. 72326 (the property of Henry Dias) on the south east by land lately belonging to the crown on the south west by land described in Plan No. 73657 (the property of A.O. Joseph) and on the north west by reservation for a road Circular Road now called Alexandra Place containing in extent two acres two roods and thirty three perches (A2. R2. P33) according to title Plan No. 73658 dated 21st November 1868 authenticated by Captain A. B. Fyers R. E. Surveyor General which said premises according to a recent figure of survey described as follows :— All that allotment of land with the buildings and plantations thereon now called “Hurstgreen” bearing assessment No. 81 situated along Alexandra Place in Cinnamon Gardens within the Municipality and District of Colombo Western Province and bounded on the north east by premises now bearing assessment No. 75 (Alexandra Place) and Nos. 6 and 24 (Horton Place) on the south east by premises now bearing assessment No. 12 (Maitland Crescent) and St. Bridget's Convent bearing assessment No. 85 (Alexandra Place) on the South west by St. Bridget's Convent bearing assessment No. 85 (Alexandra Place) on the North west by Alexandra Place containing in extent two acres two roods and twenty seven point nought seven perches (A2. R2. P27. 07) according to Plan No. 109 dated 29th March 1951 made by S. Rajendra Licensed Surveyor.

THE SECOND SCHEDULE ABOVE REFERRED TO:—

1. All that divided allotment of land marked Lot A situated along Alexandra Place in Cinnamon Gardens within the Municipality and District of Colombo Western Province and which said lot A is bounded on the north east by premises now bearing assessment No. 75 (Alexandra Place) on the south east by lot B on the south west by lot N (reservation for road 30 feet wide) and on the north-west by Alexandra Place containing in extent one rood (A0. R1. P0) according to Plan No. 109 dated 29th March 1951 made by S. Rajendra Licensed Surveyor.
2. All that divided allotment of land marked Lot B situated along Alexandra Place in Cinnamon Gardens within the Municipality and District of Colombo aforesaid and which said Lot B is

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Transfer  
No. 519—  
2-5-51.  
—(contd.)

bounded on the north east by premises now bearing assessment No. 75 (Alexandra Place) and premises bearing assessment No. 6 (Horton Place) on the south east by Lot C on the south west by Lot N (reservation for road 30 feet wide) and on the north west by lot A containing in extent thirty perches (A0. R0. P30) according to the said Plan No. 109.

All that divided allotment of land marked Lot C with the buildings thereon bearing assessment No. 81 situated along Alexandra Place in Cinnamon Gardens aforesaid and which said Lot C is bounded on the north east by premises now bearing assessment No. 6 and 24 (Horton Place) on the South east by Lot D and Lot O (reservation for road 20 feet wide) on the south west by Lot N (reservation for road 30 feet wide) and on the North west by Lot B containing in extent one rood and twenty perches (A0. R1. P20) according to the said Plan No. 109. 10

All that road reservation marked Lot N with the buildings standing thereon situated along Alexandra Place in Cinnamon Gardens within the Municipality and District of Colombo aforesaid and which said Lot N is bounded on the north east by Lots A, B and C on the south east by Lot O (Reservation for road 20 feet wide) on the south west by Lots H, J, K and M and on the north west by Alexandra Place containing in extent thirty five decimal four nine perches (A0. R0. P35. 49) according to the said Plan No. 109. 20

5. All that road reservation marked Lot O with the buildings thereon situated along Alexandra Place in Cinnamon Gardens aforesaid and which said lot O is bounded on the north east by Lot D on the south east by Lots E and F on the south west by Lot G and on the north west by Lot H, lot N (reservation for road 30 feet wide) and Lot C containing in extent ten decimal eight four perches (A0. R0. P10. 84) according to the said Plan No. 109. 30

Signed in the presence of us :  
(Sgd.) H. C. J. RUSTOMJEE  
(Sgd.) H. ARGIRIS JINADASA

(Sgd.) S. TAMBYAH  
(Sgd.) M. NADARAJA  
(Sgd.) N. NADARAJA  
(Sgd.) T. NADARAJA

(Sgd.) S. S. KANDAIYA  
*Notary Public*

Signed by the said Thambyah  
Murugesar on the 19th day of  
April 1951 at Colombo in the  
presence of us :

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Transfer  
No. 519—  
2-5-51.  
—(contd.)

(Sgd.) T. MURUGESAR

*Witnesses :*

(Sgd.) Argiris Jinadasa

(Sgd.) A. S. H. M. Harid

(Sgd.) S. S. KANDAIYA

*Notary Public*

10

Signed by the said Mangales-  
wari Somanathan and Sivasitham  
param Somanathan at Colombo  
on this 2nd day of May 1951 in  
the presence of us :

(Sgd.) M. SOMANATHAN

(Sgd.) S. SOMANATHAN

(Sgd.) S. S. KANDAIYA

*Notary Public*

20

(Sgd.) H. Argiris Jinadasa

(Sgd.) A. S. H. M. Harid

30 I, Segaraja Sekeram Kandaiya of Colombo Notary Public do  
hereby certify and attest that the foregoing instrument having  
been duly read over by the said Sivanandam Thambyah, Mahadevi  
Nadarajah, Nadeswaran Nadarajah and Thambyah Nadarajah  
the executants within named who have signed as "S. Tambyah,"  
"M. Nadaraja," "N. Nadaraja" and "T. Nadaraja" respectively  
in the presence of Homi Cawasjee Jamshedjee Rustomjee Proctor  
of Colombo and Hondamuni Argiris Jinadasa of Hulftsdorf Colombo  
who have signed as "H. C. J. Rustomjee" and "H. Argiris Jinadasa"  
respectively the subscribing witnesses thereto all of whom are  
known to me the same was signed by the said executants by the  
said witnesses and also by me the said Notary in my presence and  
in the presence of one another all being present at the same time  
at Colombo on this Eighteenth day of April one thousand nine  
hundred and fifty One.

40 I further certify and attest that both in the original and duplicate  
page 3 line 12 "ap" typed over line 17 after the word "thereof"  
the words from "but" to "sold" written in ink line 20 "intered"  
deleted and "intended so" substituted line 23 "doth hereby"  
interpolated page 4 line 1 "or" interpolated page 5 lines 21 and 30  
"in" and "and" interpolated lines 30 to 32 from the word "Man"  
to the word "Murugesar" deleted page 6 line 25 "now" interpolated  
page 7 lines 10 and 22 "rood" and "divided" and "marked lot C"



R7  
Deed of  
Transfer  
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2-5-51.  
—(contd.)

interpolated, lines 18 and 19 “on” and “and” typed over lines 23 and 32 “called Haarlem House” “presently known as” and “in” deleted page 8 in the last declaration clause line 4 “May” typed on erasure before the said instrument was read over and signed as aforesaid and that the within named consideration was paid as follows :—

1. Previously received on agreement No. 3684 dated 3rd March 1951 attested by H V. Ram Iswera of Colombo Notary Public	Rs. 450,000.00	
2. Per cheque No. C 152966 drawn on the Eastern Bank for	Rs. 7,300.00	10
3. Per cheque No. FQ 956517 drawn on the National Bank for	Rs. 26,225.00	
	<u>Rs. 78,525.00</u>	

and that the duplicate of this instrument bears seven stamps of the value of Rs. 1267/- and the original a stamp of Re 1/- and that the said stamps were impressed by the Commissioner of Stamps Ceylon.

*Date of Attestation* {  
18th April, 1951..... : } (Sgd.) S. S. KANDAIYA 20  
*Notary Public*

( S E A L )

I, Segaraja Sekeram Kandaiya of Colombo Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the said Thambyah Murugesar the executant within named who has signed as “T. Murugesar” in the presence of Hondamuni Argiris Jinadasa and Aboo Sally Hadjir Mohamed Harid both of Hulftsdorf Colombo who have signed as “H. Argiris Jinadasa” and “A. S. H. M. Harid” respectively the subscribing witnesses thereto all of whom are known to me the same was signed 30  
by the said executant by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo on this Nineteenth day of April One thousand nine hundred and fifty One.

*Date of Attestation*  
19th April, 1951..... (Sgd.) S. S. KANDAIYA,  
*Notary Public.*

( S E A L )

I, Segaraja Sekeram Kandaiya of Colombo Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the said Mangaleswari Somanathan and Sivasithamparam Somanathan the executants within named who have signed as "M. Somanathan" and "S. Somanathan" respectively in the presence of Hondamuni Argiris Jinadasa and Aboo Sally Hadjar Mohamed Harid both of Hultsdorf Colombo who have signed as "H. Argiris Jinadasa" and "A. S. H. M. Harid" respectively the subscribing witnesses thereto all of whom are known to me the same was signed by the said executants by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo on this Second day of May One thousand nine hundred and fifty One.

R7  
Deed of  
Transfer  
No. 519—  
2-5-51.  
—(contd.)

10

*Date of Attestation* }  
2nd May 1951..... }

(Sgd.) S. S. KANDAIYA,  
*Notary Public.*

( S E A L )

20

True Copy

(Sgd.) S. S. KANDAIYA,  
*Notary Public.*

Colombo, 1st August 1957.

R 6

R6  
Letter from  
H. V. Ram  
Iswera to the  
Assistant  
Commissioner  
of Income  
Tax—  
15-7-57

**LETTER FROM H. V. RAM ISWERA TO THE ASSISTANT  
COMMISSIONER OF INCOME TAX**  
(with 3 annexes)

H. V. RAM ISWERA  
PROCTOR & NOTARY  
PHONE : 2 7 7 4

136, Hulftsdorp Street,  
Colombo 12.

RESIDENCE : "Devram"  
79, Alexandra Place, Colombo 7.  
PHONE : 9 4 0 9 8.

15th July, 1957. 10

The Asst. Commissioner of Income Tax,  
Colombo.

Dear Sir,

Income Tax appeals 1949/50 to  
1953/54  
**Ref. No. 57/9043/LP.**

With reference to the interview Mr. Ambalawanar, Advocate,  
and myself had with you on 12-7-57 the number of Pillay's Case is  
1729/MB, D.C. Colombo.

Re-Alexandra Road, I have got three letters which are herewith 20  
forwarded.

Regarding the other sum of Rs. 15,000/- you referred to at the  
interview please see record in case No. 1759/MB D.C. Colombo.

Yours faithfully

(Sgd.) H. V. RAM ISWERA

Annex (i) to R 6.

D. SENEVIRATNE  
T'PHONE : 9 1 5 7 5

88, Rosmead Place,  
Colombo 7.  
12th March, 1951.

H. V. RAM ISWERA ESQR.,  
PROCTOR S.C. & N.P.  
COLOMBO 12.

R6  
Letter from  
H. V. Ram  
Iswera to the  
Assistant  
Commissioner  
of Income  
Tax—  
15-7-57  
—(Contd)  
Annex (i)

Dear Mr. Ram Iswera,

**Hurst Green**

- 10 In reference to the conversation I had with you, I have before me the rough plan of 81 Alexandra Place. I have talked over the matter with the actual Buyer, my sister-in-law, Mrs. Waiyaratne, and she does not want the two Blocks near the Shell Petrol Service Station. She is willing to have the two Blocks from the Convent Side, failing these, the two Blocks on the centre of the 20 foot Road way.

Kindly send me a reply early, so that I can make a deposit and confirm my offer.

Yours Sincerely,

(Sgd.) D. SENEVIRATNE

## Annex (ii) to R 6

R6  
 Letter from  
 H. V. Ram  
 Iswera to the  
 Assistant  
 Commissioner  
 of Income  
 Tax—  
 15-7-57.  
 —(contd.)  
 Annex (ii)

DR. W. BALENDRA  
 F.D.S. (EDIN) M.R.C.S.,  
 L.D.S. (ENG.),  
 L.R.C.P. L.M.S. (CEY.)  
 DENTAL SURGEON  
 TELEPHONE : 9 2 9 2

Lincoln House,  
 Ward Place,  
 Colombo.

17th March, 1951.

Dear Mr. Ram Iswera,

I inspected Green Hurst, Alexandra Place, this morning. The lots which you are offering cheap on the Petrol shed side are not good. 10  
 It is not only by the side of the Petrol Shed but the shed lights will always be a nuisance. Besides my wife is not at all satisfied with those lots.

I would take the lots facing the road and adjoining the Convent and I shall see you tomorrow morning in your office to discuss this matter.

Yours Sincerely,  
 (Sgd.) W. BALENDRA.

Annex (iii) to R 6

K. C. NADARAJAH  
PHONE : 9 3 3 0

100, Norris Canal Road,  
Colombo.  
28/3

My dear Ram,

I have just inspected lots A & B mentioned by you to me the other day. I am afraid I am not interested in these blocks because they are adjoining Felix Perera's petrol shed and I can't live with petrol fumes all the time.

- 10 I must meet you sometime tomorrow regarding the other blocks. I am sure you will give me one adjoining the Convent. Please ring me after 8 p.m.

In haste,

Yours,

(Sgd.) Illegibly.

R6  
Letter from  
H. V. Ram  
Iswera to the  
Assistant  
Commissioner  
of Income  
Tax—  
15-7-57.  
—(contd.)

Annex (iii)

A3  
Letter from  
W. A. J. Botejue  
to H. V. Ram  
Iswera—  
15-11-57.

**LETTER FROM W. A. J. BOTEJUE TO  
H. V. RAM ISWERA**

622, Temple Road,  
Maharagama,  
15th November, 1957.

H. V. RAM ISWERA ESQR.,  
PROCTOR S.C. & NOTARY PUBLIC,  
78, ALEXANDRA PLACE,  
COLOMBO.

10

**Premises No. 81 Alexandra Place, Colombo.**

Dear Sir,

It is with great pain of mind and regret to inform you that your Mrs. Ram Iswera and you have overlooked my just remuneration derived from the above purchased by your Mrs. and you jointly as such, I regret to note that your Mrs. and you have not replied to my letters sent to you by registered post dating back to 15-3-51 requesting your Goodselfs to remit my legitimate dues due on the above purchased by you jointly and which dues were very overdue for a considerable period and also you were quite aware of my sickness with the attack of Pulmonary Tuberculosis nearly five years and during which time I could not see you or write to you, I just recovered my lost health to some extent but not entirely as such, my Doctor J. R. Wilson who is the Chief Physician of the Welisara Chest Clinic has advised me to take good nourishments and long rest at least for one year.

20

Therefore, I need not write to you a lengthy letter as the facts are before you if you only remember what your Mrs. Ram Iswera told me that she would like to buy a building block nearby St. Bridget's Convent to put up a bungalow for the convenience of her children who are attending the same Convent. As such, I need not write to you in details as I am still under treatment.

30

Therefore, I shall be very grateful to your Goodselfs and consider my present state of health and the services rendered by me in finding the above premises at the request of your Mrs. Ram Iswera.

Therefore, I am fully expecting my remuneration from your Mrs. Ram Iswera and you at receipt of this letter.

Yours faithfully,  
(Sgd.) W. A. J. BOTEJUE.

A 5

**LETTER FROM H. V. RAM ISWERA TO W. A. J. BOTEJUE**

19th November, 1957.

A5  
Letter from  
H. V. Ram  
Iswera to  
W. A. J.  
Botejue—  
19-11-57

W. A. J. BOTEJUE ESQR.,  
622, TEMPLE ROAD,  
MAHARAGAMA.

Dear Sir,

**81, Alexandra Place,  
Colombo.**

10 With reference to your letter dated 15th November 1957, I had no dealings whatever with you regarding the purchase of the above property. I deny that any remuneration is due to you from me. I would advise you to take 'long rest' instead of worrying yourself over imaginary claims.

Your claim is a fit case for C.I.D. investigation. You are trying to blackmail people.

Yours faithfully,

(Sgd.) H. V. RAM ISWERA



A4  
 Letter from  
 W. A. J.  
 Botejue to H. V.  
 Ram Iswera—  
 4-12-57.  
 —(contd.)—

**LETTER FROM W. A. J. BOTEJUE TO H. V. RAM ISWERA**

622, Temple Road,  
 Maharagama,  
 4th December, 1957.

H. V. RAM ISWERA ESQ.,  
 PROCTOR & NOTARY,  
 79, ALEXANDRA PLACE,  
 COLOMBO.

Dear Sir,

10

PREMISES NO. 81, ALEXANDRA PLACE, COLOMBO.

I am in receipt of your letter of the 19th ultimo and was surprised to note the contents therein which contains a tissue of inaccuracies, mistatements and mischievous inventions, which I totally repudiate and you have further stated in your letter that I should take long rest without getting myself worried over imaginary claims as such, I wish to know from you how my legitimate claim crept into your brains as imaginary claim and if you are trying to convert my legitimate claim into your imaginary claim as you are well used to such tactics which could be proved in Court of Law and in the appeal case you had some time ago and the judgement delivered by Mr. Justice Nagalingam would be ample proof to prove your dishonesty, if necessary and also I wish to advise you to refer to your wife Mrs. Harriet Ram Iswera to find out whether my claim was legitimate or illegitimate, as I had dealings with her at the commencement of the above transaction and not with you as your wife requested me to find a building block close to St. Bridgets Convent with a view to put up a bungalow for the convenience of her children who were attending the above Convent as such you could satisfy to yourself if you care to look into my registered letters sent to you dating back to 15-2-1951 requesting you both to remit my negotiated fee of Rs. 11,250/- derived from the above purchase by your wife and you jointly.

20

30

You have stated in your letter that my legitimate claim is a fit case for the C.I.D. investigation and also you have further stated that I am trying to black-mail people, therefore, please note that unless you withdraw such defamatory statements immediately I will be compelled to sue you for heavy damages.

I further wish to remind you of your dishonest work you have done by introducing the most inferior timber to build that dud

40

house and later you compelled me to purchase same by duping the Government Agent W.P. by stating that the house you got built was a very strong one and fit for occupation and thereby you got the certificate of confirmity to dupe me, therefore I do not wish to state any further details as to the sale of that dud house by your wife Mrs. Harriet Ram Iswera nee Perera and you to me for Rs. 5,500/- and six months after my occupation of the new house the whole roof came down damaging a good lot of my furniture which had cost me over Rs. 1,000/- besides the other damages such as doors and windows frames and the entire roof at a cost of Rs. 2500/-.

10 I came immediately and informed you and your wife of the incident but you did not care to come and see the pitiful sight, but you said what can I do and put the blame on your contractors and kept silent that was the time I should have reported you to the C.I.D. for necessary actions against you.

Therefore I wish to inform you in conclusion that I have waited such a long time to settle all my debts against the dud house I bought from you from the Commission which I would have normally got from Mrs. S. Thambyah through her son-in-law Mr. S. Somanathan

20 Proctor if not for your crooked dealings by approaching Mrs. Thambyah indirectly with the help of her sister-in-law Mrs. V. Ramanathan after having requested me to give an offer of Rs. 375,000/- on your behalf for the above premises which fact could be proved through your wife and the letters I have corresponded with Mr. S. Somanathan and Mrs. S. Thambayah and also through your wife who had appealed to me to find out a block of land close to St. Bridgets Convent.

Therefore, I shall be much obliged if you would kindly consider my present state and the services I have rendered in finding the

30 above premises at the request of your wife and considering all that please remit my just fees without delay.

Yours faithfully,  
(Sgd.) W. A. J. BOTEJUE.

A4  
Letter from  
W. A. J.  
Botejue to H. V.  
Ram Iswera—  
4-12-57.  
—(contd.)

A1  
Letter from  
K. C. Nadaraja  
to Ram  
Iswera—  
10-12-60

**LETTER FROM K. C. NADARAJAH TO RAM ISWERA**

8, Mc Carthy Road,  
Colombo,  
10 December, 1960.

My dear Ram Iswera,

I remember that the Rs. 25,000/- mentioned by you on the telephone was given by me to you in early March 1951. I am unable to trace the cheque counterfoil at this late date because in the process of shifting from my old residence, some of my papers have been misplaced. 10

I have been able to trace the counterfoil of the cheque for the balance amount which I paid you in April, 1951. This helps me to date the payment of the earlier sum under reference.

Yours Sincerely,  
(Sgd.) K. C. NADARAJAH

