

1956

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

THE COMMISSIONER OF INCOME TAX, Appellant, and J. L. D. PEIRIS, Respondent

S. C. 27—Case stated under Section 74 of the Income Tax Ordinance (Cap. 188)

Income tax—Death of person carrying on a business—Computation of statutory income—“Ceases to carry on a business”—Income Tax Ordinance (Cap. 188), ss. 5 (1), 11 (1), 11 (6), 11 (9), 11 (10).

When a person who carries on a business dies, it cannot be said that, upon his death, he ceases to carry on or exercise a trade, business, profession or vocation in Ceylon within the meaning of section 11 (6) of the Income Tax Ordinance. Therefore, paragraph (b) of section 11 (6) does not apply for the purposes of computing the statutory income of the deceased for the year of assessment preceding that in which he died.

CASE stated under section 74 of the Income Tax Ordinance.

M. Tiruchelvam, Deputy Solicitor-General, with *A. Mahendrarajah*, Crown Counsel, and *R. S. Wanasundera*, Crown Counsel, for the appellant.

H. F. Perera, Q.C., with *S. J. Kadirgamar* and *John de Saram*, for the respondent.

Cur. adv. vult.

March 2, 1956. GRATIAEN, J.—

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

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

“ On the facts as submitted between the parties, did Mrs. N. C. Peiris, upon her death on 23.10.51, cease to carry on or exercise a trade or business, profession or vocation in Ceylon within the meaning of section

11 (6) of the Income Tax Ordinance (Cap. 188) ? " If so, does paragraph (b) of section 11 (6) of the said Ordinance apply for the purposes of computing the statutory income of Mrs. Peiris for the year of assessment preceding that in which she died ? "

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

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

Section 5 (1) : " Income tax shall, subject to the provisions of this Ordinance be charged for each subsequent year of assessment (i.e. after the year commencing on 1st April 1932) in respect of the profits and income of every person for the year preceding the year of assessment but without prejudice to any of the provisions of this Ordinance which enact that tax is to be charged in particular cases in respect of the profits and income of a period other than the year preceding the year of assessment."

Section 11 (1) : " Save as provided in this section, the statutory income of every person for each year of assessment from each source of his profits and income (the sources of income are enumerated in section 6) shall be the full amount of the profits and income which was derived by him or arose or accrued to his benefit from such source during the year preceding the year of assessment, notwithstanding that he may have ceased to possess such source or that such source may have ceased to produce income."

Section 11 (6) : " Where a person resident or non-resident ceases to carry on or exercise a trade, business, profession, vocation or employment (these are included in the sources of income enumerated in section 6) in Ceylon or, being resident elsewhere, his statutory income therefrom shall be :

- (a) as regards the year of assessment in which the cessation occurs, the amounts of the profits of the period beginning on the 1st day of April in that year and ending on the date of cessation ; and
- (b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the statutory income as computed in accordance with the foregoing sub-sections or the amount of the profits of such year, whichever is the greater,

and he shall not be deemed to derive statutory income from such trade, business, vocation or employment for the year following that in which the cessation occurs." (There follows a proviso which has no bearing in the present context.)

Section 11 (9): “Where any person dies on a day within a year of assessment, his statutory income for such year shall be the amount of profits and income of the period beginning on the 1st day of April in the year, and ending on that day.”

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

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

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

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

No special provision is made in section 11 (9) for the computation of a person’s statutory income for the year of assessment preceding the year in which he died. Unless, therefore, section 11 (6) can properly be applied

partially to such a situation, the assessment must be made in accordance with the general scheme for computation laid down by section 11 (1). This was the view taken by the Board of Review.

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

In my opinion, section 11 (9) provides a comprehensive exception to the general scheme for ascertaining a deceased person's statutory income, and, apart from the special provision in respect of the year of assessment in which the death occurred, the income (from whatsoever source) of all preceding years must be computed under the general section 11 (1). I agree with the Board of Review that section 11 (6) is intended only to deal with cases where an assessee does not cease to be "a person" when he ceases to carry on his trade, business, profession or vocation. Section 11 (6) appears to me to contemplate a person who, at the moment of cessation, continues to have a place of "residence" (either in Ceylon or elsewhere) and continues to be a potential income-earner liable to further taxation under the Ordinance.

Let it be conceded that section 11 (6) *prima facie* covers a case of "cessation" by death. Even on that assumption, section 11 (9) is clearly an exception to paragraph (a) of section 11 (6) because it provides for a special computation of the deceased's entire income during that year of assessment, and not merely of his income from one particular source. If, therefore, paragraph (a) of section 11 (6) does not apply in respect of the year in which the death occurred, paragraph (b) of section 11 (6) must also be ruled out as far as the preceding year is concerned.

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

G UNASEKARA, J.—I agree.

Appeal dismissed.

¹(1930) 16 T. C. 615 at 623.

²(1938) 2 K. B. 464 at 473.