

**TRUST UNION SHIPPING CORPORATION**  
**v**  
**COMMISSIONER GENERAL OF INLAND REVENUE**

COURT OF APPEAL  
DISSANAYAKE, J.  
SOMAWANSA, J.  
C.A. 02/97  
MAY 15, 2002  
JULY 16, 2002

*Inland Revenue Act No. 28 of 1979 – S. 2, S. 74(1), S. 117(1), S. 122(1) –  
Case stated – Income – Liable to taxation – Income derived from property in  
Sri Lanka – What is property? – Are Ships movable property?*

The appellant's (non Resident Ship Owner) ships were utilized by the Ceylon Shipping Lines Ltd. to fulfil its objectives with the contract entered into between

the Food Commissioner and the Ceylon Shipping Lines Ltd. The Appellant was treated as a non – resident Company. Two ships belonging to the appellant were made available and were in Sri Lankan waters and operated more than 63 voyages in coastal shipping. The appellant was assessed by the Inland Revenue Department. The Commissioner General determined that the appellant is liable for tax. The Board of Review over turned that decision and held that, the appellant was not liable to tax in terms of section 74(1) but was liable for tax in terms of section S. 2(2).

The Board of Review on an application by the appellant stated a case on a question of law – whether the ships in questions are property in Sri Lanka ?

**Held :**

1. The Act is silent as to what constitutes property in Sri Lanka.
2. However section 2(2) read with section 163 does indicate what constitutes property in Sri Lanka liable for imposition of taxes.
3. Term profit and income arising in or derived from Sri Lanka found in section 2(1)b has been defined in section 2(2).
4. The definition include these situations, one such situation in section 2(2) is when profits are derived from property in Sri Lanka and in terms of section 363 property includes any interest in any movable and immovable property.

The appellant's ships come under "Movable Property". The appellants did earn profits from the ships that were in Sri Lanka.

**Case stated under s. 122(1) of the Inland Revenue Act, 28 of 1979**

**Case referred to :**

1. *Cape Brandy Syndicate v IRC* - (1921) 1 KB 64  
*Shibly Aziz P.C. with L. Hettiarachchi and S. Dayaratne* for appellant  
*M.R. Ameen*, State Counsel for the respondent.

*cur.adv.vult*

August 2, 2002

**SOMAWANSA, J.**

This is an application under section 122 (1) of the Inland Revenue Act No. 28 of 1979 whereby the Board of Review on an application made by the appellant has stated a case on a question of law for the opinion of this Court. The question of law that the appellant requested the Board of Review in the said application to be referred for the opinion of this Court is as follows :

"Matter in dispute is whether the ships in question are property in Sri Lanka as held by the Board under Section 2 of the Inland Revenue Act No. 28 of 1979".

The relevant facts are the Food Commissioner on or about 10.08.1984 entered into a contract of affreightment marked A3 with the Ceylon Shipping Lines Ltd., for the carriage of cargo between the coastal ports in Sri Lanka. Although this contract was initially operative from 10.08.1984 to 31.12.1985, it was subsequently extended beyond the said period. The Ceylon Shipping Lines Ltd., a governmental institution which had a monopoly of coastal shipping in Sri Lanka, owned no ships. Consequently it entered into an agreement dated 27.11.1985 marked A2 with the appellant a non-resident ship owner whereby the appellant's ships would be utilized by Ceylon Shipping Lines Ltd., to fulfil its obligation under the said contract between the Food Commissioner and the Ceylon Shipping Lines Ltd., Marked A3. 10 20

The appellant though it maintained a liaison office at No. 92 Rosmead Place, Colombo 7 during the period 1985 to 1986 did not have a registered office in Sri Lanka and the agreement marked A2 disclosed that its principal place of business as being in Nagasaki, Japan. As the appellant by itself could not look after its own interest in Sri Lanka it appointed Ceylon Shipping Lines as its protective agent. Consequently it was treated as a non resident company for the purpose of the Inland Revenue Act No. 28 of 1979. 30

In pursuance to the contract of carriage of cargo between the Food Commissioner and Ceylon Shipping Lines Ltd., two ships belonging to the appellant namely 'Marine Nagasaki' and 'World Sanpo' were made available and were in Sri Lankan waters from January 1985 to September 1986 and operated more than 63 voyages in coastal shipping during this period. Pursuant to these voyages on the basis of information supplied by the Ceylon Shipping Lines Ltd., the appellant was assessed by the Inland Revenue Department.

The appellant appealed against the said assessment to the Commissioner General of Inland Revenue in terms of section 117(1) of the Inland Revenue Act No. 28 of 1979 and the Commissioner General of Inland Revenue determined that the 40

appellant is liable for tax in terms of sections 2 and 74(1) of the said Act No. 28 of 1979. The appellant appealed against the said determination of the Commissioner General of Inland Revenue to the Board of Review in terms of section 119(3) of the Act. The Board of Review by its order dated 27.07.1990 held that the appellant was not liable for tax in terms of section 74(1) of the Inland Revenue Act No. 28 of 1979 but that the appellant was liable for tax in terms of section 2(2) of the said Act No. 28 of 1979. Aggrieved by the said determination of the Board of Review, the appellant has come to this Court by way of a case stated in terms of section 122(1) of the said Act seeking the opinion of this Court on the said question of law. 50

It is contended by the counsel for the appellant that the Board of Review erred in law by holding that the income earned by the appellant in the instant case was liable to taxation on the basis of income derived from property in Sri Lanka, in as much as the appellant's ships do not come within the category of property in Sri Lanka. It was the position of the appellant that as the Act is silent as to what constitutes property in Sri Lanka and in the absence of anything contrary in the Act, movable or immovable property qualifies as property in Sri Lanka only in the event that such property has a permanent nexus with Sri Lanka. Unfortunately the appellant has failed to explain as to what it means by the term "permanent nexus". In any event section 2(2) of the Inland Revenue Act No.28 of 1979 does not impose this additional requirement of a permanent nexus which the appellant is seeking to introduce to the Section. The said Section 2(2) of the Inland Revenue Act reads as follows : 60

"For the purposes of this Act, "profits and income arising in or derived from Sri Lanka" includes all profits and income derived from services rendered in Sri Lanka, or from property in Sri Lanka, or from business transacted in Sri Lanka, whether directly or through an agent". 70

Therefore it is clear on a reading of this section that the requirement of permanent nexus has nothing to do with section 2(2). In *Cape Brandy Syndicate v IRC*<sup>(1)</sup> per Rowlatt that in taxing statutes.... "one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is 80

no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

The term 'property' has been defined in section 163 of the Inland Revenue Act No. 28 of 1979 to include 'any interest in any movable or immovable property.' The obvious characteristic of a movable property is that it can be moved from place to place. Consequently it cannot have a permanent nexus. On the other hand, the requirement of a permanent nexus is a characteristic of immovable property. If the interpretation suggested by the appellant is applied to section 2(2) the distinction between movable and immovable property would disappear.

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Be that as it may the Inland Revenue Act No. 28 of 1979 is indeed silent as to what constitutes property in Sri Lanka. However section 2(2) read with section 163 does indicate what constitute property in Sri Lanka liable for imposition of taxes. The term 'profit and income arising in or derived from Sri Lanka' found in section 2(1) (b) of the Act has been defined in section 2(2) of the Act. This definition in section 2(2) includes three situations. One such situation in Section 2(2) is when profits are derived from 'property in Sri Lanka' and in terms of Section 163 property includes any interest in any movable and immovable property. It would appear that the appellant's ships would come within the term 'movable property'. It is conceded that in the instant case the ships owned by the appellant are registered outside Sri Lanka and came into Sri Lankan territorial waters in pursuance of a charter agreement. But the fact that they operate 64 voyages in coastal shipping and earned profits would certainly change the legal status of the ships.

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In the written submissions of the appellant, it is contended that if property in Sri Lanka were to be defined to encapsulate a wide and all encompassing meaning as resorted to by the Board of Review in arriving at its conclusion that the appellant's ships constitute property in Sri Lanka. Then in such a situation even air crafts that over fly the air space of Sri Lanka or the ships that pass through the exclusive economic zone or the territorial waters of Sri Lanka without calling in at any part in Sri Lanka (which is a common occurrence in International Shipping and Aviation) will become liable to taxation on the basis that these air crafts or ships also constitute 'property in Sri Lanka'. This analogy I must say is complete-

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ly misconceived. In terms of section 02 of the Inland Revenue Act No. 28 of 1979 the liability for taxes arise when profits are derived from property in Sri Lanka. In the examples cited by the appellant the air craft and ships do not appear to earn profits in Sri Lanka since they merely pass through Sri Lanka. However the two ships named 'Marine Nagasaki' and 'World Sanpo' belonging to the appellant were not passing through Sri Lanka but were in Sri Lankan waters from January 1985 to September 1986. It operated 64 voyages in coastal shipping during this period. The appellant did earn profits from these ships that were in Sri Lanka. I am inclined to take the view that all these factors clearly established that the appellant's ships constitute property in Sri Lanka within the meaning of section 2(2) of the Inland Revenue Act No. 28 of 1979.

I might also mention that the appellant in addition to the matter in issue in this case stated has raised other issues which are irrelevant for the purpose of this case stated. Hence I do not propose to consider those issues as the opinion of this Court has not been sought in respect of them.

Therefore in expressing my opinion to the question of law referred to in the case stated as set out above, I answer the said question of law in the affirmative and I hold that the ships in question are property in Sri Lanka as held by the Board of Review under section 2 of the Inland Revenue Act No. 28 of 1979.

**DISSANAYAKE, J.** - I agree

*Question of law answered in the affirmative.*