[IN THE PRIVY COUNCIL]

1952 *Present :* **Viscount Simon, Lord Normand, Lord Oaksey, Lord Reid and Sir Lionel Leach**

GAMINI BUS COMPANY, LTD., Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent

PRIVY COUNCIL APPEAL No. 36 OF 1951

S. C. 82—Income Tax, Case Stated 10/216/BRA 208

Income tax—Right of Assessor to reject returns of income—Power to make his own estimates—Assessment—Scope of discretion vested in income tax authorities—Official secrecy—Scope of rule—Income Tax Ordinance (Cap. 188), ss. 4 (1), 64 (2), 86 (2).

Under section 64 (2) of the Income Tax Ordinance, where a person has furnished a return of income the Assessor may reject the return without giving reasons. Where the Assessor gives reasons for rejecting the return, the question whether the reasons are in fact adequate or inadequate is quite immaterial if the Assessor honestly came to the conclusion that he should not accept the return but should substitute estimates of his own.

When assessing the income of a 'bus company in an appeal preferred under section 69 of the Income Tax Ordinance, the Commissioner of Income Tax took into consideration, at any rate in part, certain information relating to the profits made by seven other 'bus companies. This information was relied on to establish that the profits of a 'bus company bore a fairly constant ratio to the company's expenditure on petrol and oil. It was set out in a document marked R 14 by the Assessor who produced it. The names of the seven 'bus companies were not given in the document and the information was extracted from files in the Income Tax Department.

Held, that the admission and use of R 14 did not constitute a breach of official secrecy within the meaning of section 4 (1) of the Income Tax Ordinance. The document did not necessarily make a disclosure of " the affairs of any person " within the meaning of that section.

Held further, (i) that the information given in R 14 was not improperly put before the Commissioner, even though the assessee was not given an opportunity of examining the files from which the information relating to other 'bus companies was extracted, or of ascertaining which companies they were. There was no breach of the principles of fair play and natural justice in putting forward the information.

(ii) that it would be wholly improper to reject the accounts submitted by the appellant company and to substitute a higher figure of assessment merely because, in the case of other taxpayers in the same line of business, the conclusion had been reached that their accounts were not properly kept. Each taxpayer is entitled to have his assessment fixed, if his return is not accepted, at a figure which the taxing authorities honestly believe to be proper in his individual case. In the present case, however, the grounds on which the decision was based did not appear to involve any misuse of the figures appearing in R 14.. Those grounds were that the income-tax authorities were entitled to reject the return made by the company and to substitute their own higher estimate of profits ; that before the Board of Review the burden lay upon the appellant to disprove the correctness of this estimate and to establish some lower figure ; that reliance on a ratio between net profit and the expenditure on

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petrol and oil was legitimate; and that R 14 showed that there were solid grounds for accepting such a ratio in calculating the appellant's proper assessment.

APPEAL from a judgment of the Supreme Court.

Frederick Grant, Q.C., with *Dingle Foot* and *G. D. Kumarakulasinghe*, for the appellant.

J. Millard Tucker, Q.C., with *Sir Reginald Hills*, for the respondent.

Cur. adv. vult.

July 29, 1952. [*Delivered by* VISCOUNT SIMON]—

This is an Appeal from a judgment of the Supreme Court of Ceylon, dated the 18th July, 1950, on a Case Stated by the Board of Review under section 74 of the Ceylon Income Tax Ordinance. By that judgment the Supreme Court (Dias S.P.J., and Swan J.) confirmed the decision of the Board of Review dated 25th May, 1949, whereby the Board upheld four assessments made on the appellant company by the Commissioner of Income Tax. As originally drawn up, the Board in the Case Stated indicated its doubt whether any question of law really arose, but an interim Order of the Supreme Court directed the following questions to be embodied in the Case Stated, so that the Supreme Court could adjudicate upon them:

(*a*) Was there evidence or material on which the Board could reject the appellant company's accounts, and was the Board justified in rejecting them?

(*b*) Was a document marked R 14 wrongly admitted in evidence at the hearing of the Appeal by the Commissioner of Income Tax?

(*c*) In making his Order did the Commissioner of Income Tax act on material which was not properly in evidence at the hearing of the Appeal by him?

The first of these questions is easily disposed of. The Assessor had before him a return of income made by the appellant company for each of the four years 1943–44, 1944–45, 1945–46 and 1946–47, and accounts furnished by the appellant company were tendered in support of these returns. By section 64 (2) of the Ordinance, the Assessor might either (*a*) accept the returns and make assessments on that basis, or (*b*) if he did not accept the returns, himself estimate the amounts of the assessable income of the appellant company and assess accordingly. The Assessor did not accept the returns made by the appellant company and estimated the amount of assessable income of the appellant company in each of the four years at substantially larger sums. He was, of course, perfectly entitled to do this according to the best of his judgment and it was not necessary for him to give his reasons for rejecting the appellant's returns or for arriving at his own estimates. It appears, however, from the documents before their Lordships, that the company's returns were rejected for two main reasons. The tendered accounts professed to show that, in the first six weeks of the company's 'bus services, it made a profit of about 2,270 rupees a week, which is equivalent to 118,000 rupees per annum. Yet in the accounts tendered for subsequent periods, each

extending over a year or a little less, the rate of profit only worked out at the rate of something like one-third or even only a quarter of this per week, although conditions in these later periods were considered to be very favourable to such a company. The second main reason given for rejecting the appellant company's accounts was that carbon-copies of the ticket-books were missing and without these it was considered that the Way Bills could not be adequately checked.

Whether these reasons were in fact adequate or inadequate is quite immaterial if the Assessor honestly came to the conclusion that he should not accept the company's returns, but should substitute estimates of his own. Indeed, when the company appealed to the Commissioner under section 69, it was conceded that the case was one for estimated assessments, though it was urged that the gross receipts as shown in the accounts should be treated as the starting point from which these assessments might be arrived at by proper deductions. The Commissioner was not prepared to reach revised figures by accepting from the company's accounts the gross receipts as shown therein and Mr. Grant was bound to admit that he was free to arrive at his own estimates of higher income independently of the accounts. The Ordinance, by section 69, confers on a person aggrieved by the Assessor's estimate the right to carry the matter to the Commissioner and to call on him to " review and revise " such assessment. This process is described as an appeal and by sub-section (6) in disposing of the appeal the Commissioner may " confirm, reduce, increase, or annul the assessment ". From the determination of the Commissioner there is provided, by sections 70 and 71 of the Ordinance, an appeal to the Board of Review, and by section 73 (4) the onus of proving that the assessment as determined by the Commissioner is excessive rests on the appellant.

In the present case, the determination of the Commissioner was that the assessment made for the year 1943–44 should be confirmed, but that the subsequent assessments should be somewhat reduced, though the revised figures were still largely in excess of what the company had put forward. On appeal, the Board of Review confirmed the Commissioner's decision. The Commissioner's determination is an elaborate document setting out his reasons and shows that the Assessor as well as the appellant company's advocate attended and put forward arguments. One of the documents which the Assessor produced was a statement marked R 14, the admission and use of which are impeached in the second and third questions raised in the Case Stated. It is this document which raises the main point of difficulty.

The assessments arrived at by the Commissioner and confirmed by the Board of Review appear to have been reached, at any rate in part, upon the view that the profits of a 'bus company in this area bear a fairly constant ratio to the company's expenditure on petrol and oil. Since the amount of the appellant's expenditure on these supplies is recorded, this would enable the approximate profit to be arrived at. The view that such a ratio exists in the case of such 'bus companies and may be taken as a guide to proper assessments is a view which the Assessor and the Commissioner of Income Tax are entitled to hold

and to apply, according to their judgment. In R 14 the expenditure of seven other 'bus companies on petrol and oil was set out and the net profit upon which these companies were assessed was also tabulated so as to show an average ratio of profits to this expenditure in the ratio of 1·51 for 1943–44, of ·86 for 1944–45, and of 1·74 for 1945–46. The names of the other 'bus companies were not given and the figures were extracted from files in the Income Tax Department. In the course of the argument for the appellant, three objections were taken to the production and use of this document.

(1) It was contended that the production of R 14 was a breach of section 4 (1) of the Income Tax Ordinance, which provides as follows :—

> " Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or assisting any person to carry out the provisions of this Ordinance, shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person which may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any person other than the person to whom such matter relates or his authorised representative, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner."

On this, it is to be observed that section 4 is to be read with section 86 (2), which provides severe penalties to be imposed by a magistrate for the offence. The section lays down a very necessary rule of conduct to be observed by the officials concerned, since it is of the highest importance that the affairs of an individual and identifiable income-tax payer should not be disclosed, in breach of section 4, to anyone outside. Section 4 is not primarily a rule of evidence, though it would be very improper to disregard it when putting forward a document like R 14. But R 14 does not necessarily make a disclosure of " the affairs of any person " within the meaning of the section, for it contains no name except that of the appellant company, and the other entries are extracted anonymously from numbered official files. Their Lordships would strongly deprecate the production or use of such a document if it did in effect disclose information about other identified or identifiable taxpayers, but it is obvious that the document was prepared and produced not for this purpose but to help to show that the ratio above referred to between net profits as assessed and the cost of petrol and oil was a fairly constant ratio in many cases, and that in using the suggested ratio as a test the Assessor, and the Commissioner after him, were not acting capriciously or at random. Mr. Grant admitted that the ratio might properly have been supported by a document containing total figures, so that under this head the objection is to details which make up the totals and which need not have been included at all. Their Lordships do not consider that section 4 was infringed and this renders it unnecessary to decide whether, if it was infringed, this would in itself invalidate the assessment.

(2) It is next said that, even if the first objection fails, it was unfair to make any use of R 14 since the appellants could not be given an opportunity of examining the files from which the figures of other 'bus

companies were extracted, or of ascertaining which companies they were. This, indeed, is the ground on which R 14 is attacked in the Notice of Appeal to the Board of Review against the decision of the Commissioner. The answer appears to be that the company could have no complaint if the taxing authorities had asserted and applied the alleged ratio without giving these details, and that the appellants can hardly be treated as suffering an injury because more detailed figures were not withheld. Their Lordships agree with the Supreme Court in thinking that the figures given in R 14 as going to illustrate and confirm the ratio were not improperly put before the Commissioner or the Board of Review, and that there was no breach of the principles of fair play and natural justice in putting them forward. It is true that the figures of net profit in R 14 are the figures at which the various 'bus companies were assessed to taxation, and in most cases are very different from the figures in their own income tax returns. But this comment only goes to the weight to be attached to the resulting ratio and does not destroy the whole effect of the contention that the ratio is supported by experience in other instances.

(3) The third objection only emerged late in the argument before the Judicial Committee. R 14 also contains figures, in the case of these other 'bus companies, which show that in the view of the income-tax authorities nearly all of them understated the profit they had made. If there was reason to think that the effective argument based on R 14 was that, as other 'bus companies had made false returns, the appellant company had done so also, their Lordships would have no hesitation in declaring that such an argument is wholly inadmissible and that a document put forward to support it is open to the gravest objection. The contention that this was the use made of R 14 receives, at first sight, some support from the document drawn up by the Commissioner in which he attributes to the Assessor the argument that gross receipts are "generally understated" in the case of 'bus companies. But this appears to be intended only as a retort to the argument on behalf of the appellant urging that the gross receipts as shown in the company's accounts should be accepted. The Commissioner uses R 14 only to confirm the ratio put forward. The Supreme Court approaches the matter in the same way. Although there are columns in R 14 which might lend themselves to be used to support an illegitimate argument, the grounds on which the decision was based do not appear to involve any misuse of these figures. Those grounds were that the income-tax authorities were entitled to reject the return made by the company and to substitute their own higher estimate of profits; that before the Board of Review the burden lay upon the appellant to disprove the correctness of this estimate and to establish some lower figure; that reliance on a ratio between net profit and the expenditure on petrol and oil was legitimate; and that R 14 showed that there were solid grounds for accepting such a ratio in calculating the appellant's proper assessment.

Their Lordships cannot conclude this part of their judgment without emphasising in the plainest terms that it would be wholly improper to justify the rejection of the appellant's accounts and the substitution of a higher figure of assessment merely because, in the case of other tax-payers in the same line of business, the conclusion has been reached that

their accounts were not accurately kept, and that their returns required to be rejected. Each taxpayer is entitled to have his assessment fixed, if his own return is not accepted, at a figure which the taxing authorities honestly believe to be proper in his individual case, and no argument that in this class of business the figure of return is habitually understated can be used to prove that this happened in his case also.

Objection was also taken by the appellant to a document marked R 12 which was produced by the Assessor before the Commissioner and is referred to in the latter's Determination. R 12 contains figures used in the computation of profits of another (but unidentified) 'bus company for the year 1947–48, and is apparently intended to reinforce the argument that a figure of gross takings derived from Way Bills requires to be checked by Ticket Books. Be that as it may, their Lordships do not consider that R 12 or any other document criticised affords adequate ground for the appellant's objection.

Their Lordships are therefore in agreement with the Supreme Court and will humbly advise Her Majesty that the appeal should be dismissed.

The appellant must bear the costs.

Appeal dismissed.