

1954

*Present : Rose C.J. and Sansoni J.*INCORPORATED LAW SOCIETY OF CEYLON, Appellant, and  
COMMISSIONER OF INCOME TAX, Respondent*S. C. 146—Income Tax Case Stated 92/366/BRA214*

*Income Tax—Law Society—Annual grant received from Government—Assessable to income tax—Meaning of terms “Business”, “Annuity”, “Income”—Ordinance No. 33 of 1947, ss. 3, 7—Income Tax Ordinance (Cap. 188), ss. 5, 6 (1) (a) (f) (h), 7 (1) (c).*

The annual grant of Rs. 50,000 received by the Incorporated Law Society of Ceylon from the Government under section 7 of Ordinance No. 33 of 1947 is chargeable with tax under one or all of the following sub-heads of section 6 (1) of the Income Tax Ordinance :—

- (a) the profits from any business ;
- (f) annuity ;
- (h) income from any other source whatsoever, not including profits of a casual and non-recurring nature.

**C**ASE stated under the Income Tax Ordinance.

*H. V. Perera, Q.C., with C. Thiagalasingam, Q.C., P. Navaratnarajah and P. Somatilakam, for the assessee appellant.*

*T. S. Fernando, Acting Attorney-General, with M. Tiruchelvam and Mervyn Fernando, Crown Counsel, for the Commissioner of Income Tax, respondent.*

*Cur. adv. vult.*

September 7, 1954. ROSE C.J.—

The Incorporated Law Society of Ceylon was incorporated by Ordinance No. 33 of 1947.

Section 7 of the Ordinance provides :

“ The Government shall make to the Society, out of the revenue of the Island, a grant of fifty thousand rupees per annum. The amount of the grant shall be paid to the Society on or before the thirtieth day of September in each year, commencing in the year 1947. ”

The question that arises for consideration is whether this annual grant of Rs. 50,000 can properly be regarded as an item of income.

The first point taken on behalf of the Appellant Society was that the provisions of Section 7 (1) (c) of the Income Tax Ordinance, Chapter 188, is applicable. The sub-clause exempts from tax—

“ The income of any institution or trust of a public character established solely for charitable purposes. ”

The general objects for which the Society is constituted are set out in Section 3 of the Ordinance and read as follows :—

- “ (a) to maintain correct and uniform practice and discipline among the members of the profession of Proctors in their capacity as proctors, or as notaries, or as both ;
- (b) to establish, regulate, and maintain Libraries, Pension and Benefit Schemes and other financial arrangements, for the benefit of its members and their dependants ;
- (c) to consider, represent and express the opinion of its Council or members, and to collect and circulate information, relating to legislative or other measures affecting the Civil or Criminal Law of Ceylon ;
- (d) generally to protect and promote the interests and welfare, rights and privileges of the profession of Proctors in Ceylon and of the public in relation to that profession ;
- (e) to discharge and perform such functions and duties as may be conferred or imposed upon the Society or any Committee thereof by any other written law. ”

In the course of the argument before us learned counsel for the Appellant Society conceded—in my opinion properly—that the general objects could not reasonably be contended to be solely charitable in their nature, and that therefore he did not propose to press the point that the Society was established solely for charitable purposes within the meaning of Section 7 (1) (c) of the Income Tax Ordinance.

That being so, the Attorney-General contends that the grant in question is caught up by Section 6 (1) of the Income Tax Ordinance under one or all of the following sub-heads :—

- “ (a) the profits from any trade, business, profession, or vocation for however short a period carried on or exercised ; . . . .
- (f) any charge or annuity ; . . . .
- (h) income from any other source whatsoever, not including profits of a casual and non-recurring nature. ”

While normally it is not regarded as relevant to consider the terminology of the “ Objects and Reasons ” of an ordinance for the purpose of deriving information to assist in its interpretation, it appears that in the present matter in the proceedings before the Board of Review a copy of the “ Objects and Reasons ” was produced and marked (A3). It is of interest—and assistance in determining the applicability of Section 6 (1) (a) and (h) of the Income Tax Ordinance—that the “ Objects and Reasons ” which accompanied the draft ordinance at the date of its introduction in 1947 included the following :—

“ In England and other Empire countries, the fees payable by members of the profession upon admission and for annual certificates authorising them to practise are paid to Societies enjoying the same status and discharging the same functions as the Law Society will, in Ceylon, under the new legislation. At present, under local Ordinances, these fees are payable to the local authority within whose area a proctor practises his profession. It is not proposed at present to make any alteration in this respect under the existing law, but since funds

must be made available to the Society to enable it properly to discharge its important functions and duties, the Bill provides that the Government should make an annual grant of fifty thousand rupees to the Society. This amount represents the average sum which is recovered annually from members of the profession."

In search of a test to determine whether the Law Society may be said to be carrying on a business within the meaning of sub-clause (a), the learned Attorney-General referred to *Commissioners of Inland Revenue v. Marine Steam Turbine Co*<sup>1</sup>, where at page 203, Rowlatt J. says, in considering the meaning to be attached to the word "business",

"the word 'business', however, is also used in another and a very different sense, as meaning an active occupation or profession continuously carried on, and it is in this sense that the word is used in the Act with which we are here concerned. I have therefore to ask myself whether the respondent company is carrying on a 'business' in this latter sense."

This judgment goes on to hold that on the facts of that particular case certain royalties received by the "old company" could not be regarded as part of the profits of any "trade or business" carried on by it within the meaning of the Finance Act. It is to be noted in that particular case that the learned Judge said,

"When it found that these royalties were likely to continue to be paid for some years, it thought that it would be best to stay the winding up and thus to continue the existence of the company, which was by no means a very active existence, until these royalties had ceased to be payable. It is contended on behalf of the Crown that the respondent company, merely because it continues to exist for the purpose of receiving these moneys, and is a registered company, is carrying on 'business' within the meaning of the Act. I am unable to come to that conclusion. The respondent company have ceased to carry on the business which they originally carried on, and are now merely receiving royalties for a certain number of years in part payment for the business and the assets of the business with which they have parted. In these circumstances I am of opinion that they are not carrying on business within the meaning of the Act."

The case of *Smart (H. M. Inspector of Taxes) v. Lincolnshire Sugar Co., Ltd.*<sup>2</sup> is also in point. The matter concerns the effect of the British Sugar (Subsidy) Act, 1925, which provided that a subsidy be paid for a number of years on sugar manufactured in Great Britain from beet grown therein. The British Sugar Industry (Assistance) Act, 1931, provided for further assistance to be given to companies engaged in such manufacture (of which the Respondent Company was one) by way of weekly advances for one year commencing on 1st October, 1931. In the event of a rise in sugar prices, the advances were, in certain circumstances, repayable, otherwise the advances were not to be repayable. On appeal from the original assessment under Schedule (D) of the relevant Finance Act, the Special Commissioners held that the advances were in their nature loans and not trading receipts, and that, in any event, they were not trading receipts until the period during which possible repayment might be

<sup>1</sup> (1920) 1 K. B. 193.

<sup>2</sup> (1937) 20 Tax Cases 643, 662.

claimed had expired; and the Company could not be assessed to Income Tax in respect thereof in the year under appeal. On appeal the matter came before the Court of Appeal and subsequently the House of Lords, where in both cases it was held, in effect, that in view of the business nature of the sums in question they were trading receipts of the company and properly to be taken into account for Income Tax purposes in the year in which they were received.

It is, in my view, unnecessary to set out in detail the reasons which Finlay J. and subsequently Lord Wright gave in coming to their conclusion. But the facts of the case and the basis of the decision ultimately arrived at would seem to assist the learned Attorney-General's contention in the present matter.

As to the meaning of the term "business" the case of *Rolls v. Miller*<sup>1</sup> is also helpful. In that matter Lindley L.J. held that a charitable institution called a "Home for Working Girls", where the inmates were provided with board and lodging, whether any payment was taken or not, was a "business". At page 88 the learned Lord Justice said,

"It is very true it is a charitable lodging-house, but what is being done? The defendants are associated together for the purpose of finding a home for these working girls, and they invite them to come and board and lodge there. They do not take any payment now—I do not think that is material—but they have a staff . . . . When we look into the dictionaries as to the meaning of the word 'business', I do not think they throw much light upon it. The word means almost anything which is an occupation, as distinguished from a pleasure—anything which is an occupation or duty which requires attention is a business—I do not think we can get much aid from the dictionary."

Applying that test it would seem to be difficult to come to any other conclusion but that the Law Society in Ceylon are engaged in a "business" wherein they perform the various activities necessary to carry out the general objects of the Society.

Be that as it may, it seems to me that, with regard to sub-clause (f), there can be no doubt that the grant in question would fall within the meaning of the term "annuity", nor, indeed was any substantial argument adduced to the contrary. It is true that learned counsel for the appellant suggested that an annual payment need not necessarily be regarded as an annuity, and he referred to *Perrin v. Dickson (Inspector of Taxes)*<sup>2</sup>. That case however referred to the details of a policy of insurance, and it was held on the facts of that case that the annual payments made by the Assurance Society did not constitute an annuity within the meaning of the Income Tax Act, but were intended to effect repayment of the principal sum with interest; and therefore that Income Tax was only payable upon such part of them as consisted of interest.

It does not seem to me that the *ratio decidendi* in that case is of assistance to the appellant in the present matter.

With regard to sub-clause (h) one has to consider the meaning to be attached to the word "income". We were referred in the course of the argument to the case of *Higgs v. Wrightson*<sup>3</sup> and *Charles Brown &*

<sup>1</sup> (1894) 27 Chancery Division 71.

<sup>2</sup> (1929) 1 K. B. D. 107.

<sup>3</sup> (1944) 26 Tax Cases 73.

*Company v. Commissioners of Inland Revenue*<sup>1</sup>. It would seem to be clear from the judgments in these two cases and from a passage in Lord Wright's judgment in *Smart (H. M. Inspector of Taxes) v. Lincolnshire Sugar Co. Ltd.* (supra) that the test to be applied is whether the receipt in question is of a revenue nature or of a capital nature.

Learned counsel for the appellant contends that the functions of the Law Society are, in effect, "capital" functions, and therefore it would not be right to regard the grant in aid payable by Government as being of a revenue nature or as being paid on revenue account. It seems to me, however, that there is nothing in the general objects as such which would necessarily lead one to the conclusion that the grant in question was intended to be only for "capital" purposes. Indeed, the contrary would seem to be the case, particularly if one has regard to the objects and reasons of the ordinance to which I have already adverted.

For all these reasons I am of opinion that there can be no doubt that the annual grant in question is caught up by Section 6 (1) (f) and (h) of the Income Tax Ordinance. Whether it is also caught up by Section 6 (1) (a) is perhaps more open to question, as there is some attraction in the argument of learned counsel for the appellant that Section 6 (1) (a) requires the existence of a profit making motive on the part of the person or association carrying on the business in question. Having regard however to the views expressed by the learned Judges, on this aspect of the matter, in the cases to which I have referred, I consider that the better opinion is that the absence of a profit making motive does not necessarily take the business in question out of the scope of the sub-clause, if the other requirements of a "business" are present; and that therefore this grant is also caught up by the sub-clause (a).

It is perhaps unnecessary to add that in the determination of this matter I have been guided entirely by legal considerations. The question as to whether or not it is desirable that the Law Society should pay Income Tax in respect of this Government grant is a matter affecting the taxation policy of government. If the decision in this case is considered, in fact, to constitute an injustice, the matter, of course, can be remedied by a simple legislative amendment.

The answers to the specific questions of law submitted to us under paragraph 10 of the case stated are therefore as follows:—

- (i) Is the Society exempt from income tax under Section 7 (1) (c)?  
No.
- (ii) Is the grant of Rs. 50,000 received from Government an "income" under Section 5 . . . . . Yes.
- (iii) Is the Grant of Rs. 50,000 received from Government "profits" from any business under Section 6 (1) (a) . . . . . Yes.
- (iv) Is it a charge or annuity under Section 6 (1) (f) . . . . . Yes, it is an annuity.
- (v) Is it "income" from any other source whatsoever under Section 6 (1) (h) . . . . . Yes.

There will be no order as to costs.

SANSONI J.—I agree.

*Appeal dismissed.*