1962 *Present :* **Tambiah, J., and Herat, J.**

A. H. V. MOHAMED, Appellant, *and* COMMISSIONER OF INLAND REVENUE, Respondent

S. C. 5/1961—Income Tax Appeal BRA 294

Income tax—Entertainment expenses incurred by employees in connection with a business—Right of proprietor to claim deduction—Income Tax Ordinance (Cap. 242), as amended by Act No. 13 of 1959, s. 12 (ab).

When the income of a business is assessed for purposes of taxation, section 12 (*ab*) of the Income Tax Ordinance, as amended by Act No. 13 of 1959, does not debar the proprietor of the business from claiming, as deductible expenses, monies spent by his employees on entertainment in connection with the business.

CASE stated under section 74 of the Income Tax Ordinance.

S. Nadesan, Q.C., with *Desmond Fernando*, for the assessee-appellant.

A. C. Alles, Solicitor-General, with *H. L. de Silva*, Crown Counsel, for the respondent.

Cur. adv. vult.

October 12, 1962. TAMBIAH, J.—

This is a case stated under section 74 of the Income Tax Ordinance (Cap. 242, as amended by Act No. 13 of 1959), in which the opinion of this Court is sought on the question whether the proprietor of a business could claim, as deductible expenses, monies spent by his employees on entertainment in connection with his business in assessing the income of the business for purposes of taxation.

The facts, set out in the case stated, are as follows : The assessee, who is carrying on a partnership business with two others as wholesale dealers in textiles, appealed against the assessment for the years 1958–1959 and 1959–1960, and claimed the sums of Rupees 2,110 and Rupees 2,853 (being moneys spent on the entertainment of customers) as expenses incurred in the production of income during these respective years. Refreshments were purchased for customers both by the partners of the business as well as by the salesmen employed in the business. The money required for the purchase of these refreshments on each occasion was obtained by the partners or by the salesmen, as the occasion demanded, from the cashier and these sums were subsequently debited to the account of the business. The employees were given a free hand in the selection of customers for the purpose of serving refreshments.

There is agreement between the assessor and the assessee on the following matters :

(i) Seventy-five per cent. of the total expenditure for entertainment was incurred by the salesmen and twenty-five per cent. by the partners.

(ii) Twenty-five per cent. of entertainment expenses incurred by the partners were not deductible expenses after the amending Act No. 13 of 1959.

(iii) The salesmen, who had provided the refreshments, were not executive officers within the meaning of section 2 of the amending Act (No. 13 of 1959).

The opinion of this court is sought in respect of the seventy-five per cent. of the expenses incurred by the salesmen.

Under the Income Tax Ordinance (Cap. 242), before the amending Act No. 13 of 1959 came into force, all expenses incurred in entertainment, on the facts of the instant case, would have been deductible expenses incurred in the production of income (vide section 12 of Cap. 242). The rights of an assessee to claim certain expenses spent on entertainment and travelling, as permissible deductions, were considerably curbed by the Income Tax (Amendment) Act (No. 13 of 1959).

Mr. S. Nadesan Q.C., who appeared for the assessee, urged that the Legislature, by introducing the amending Act (No. 13 of 1959), never intended to interfere with small scale entertainment provided by business men through their employees, such as offering aerated waters, etc., to their prospective customers. It is a well-known fact that owners of textile businesses often serve aerated waters to their prospective customers. Indeed, such a benevolent gesture not only quenches the thirst of the prospective customers but also induces them to buy some articles of clothing as a matter of moral obligation. Mr. Nadesan urged that such a practice would not only be conducive to an increase in income for businessmen but also enables the revenue department to reap a richer harvest by way of taxes. Be that as it may, the intention of the Legislature has to be ascertained on the wording of the statute itself where such wording is clear and unambiguous (vide *Sussex Peerage Claim* [1]; accepted by the Judicial Committee in *Cargo ex Argos* [2]).

The relevant provisions of the amended Income Tax Ordinance (Cap. 242, as amended by Act No. 13 of 1959), read as follows :

" 12. For the purpose of ascertaining the profits or income of any person from any source no deduction shall be allowed in respect of—

(*ab*) the following for any year of assessment commencing on or after April 1, 1958 :—

(i) expenses incurred in connection with employment other than the expenses referred to in section 9 (i) (*h*) ;

[1] *(1844) 11 Cl. & F. 85, 143 ; 6 St. Tr. (N. S.) 79.*
[2] *(1872) L. R. 5 P.C. 134, 153.*

(ii) any travelling expenditure in excess of two thousand rupees a year incurred in connection with any trade, business, profession or vocation carried on or exercised by such person *other than any such expenditure so incurred by an employee of such person who is not an executive officer* ;

(iii) entertainment expenses *incurred* by such person in connection with any trade, business, or profession or vocation carried on or exercised by him ;

(iv) entertainment expenses *incurred* by an executive officer of such person in connection with a trade, business, profession or vocation carried on or exercised by such person ;

(v) entertainment or travelling allowance paid by such person to his executive officer."

Mr. Nadesan contended that the intention of the Legislature in passing the amending Act was to minimise some of the abuses of the assessees and their executives, who entertained people lavishly and became globe-trotters, under the guise of travelling in connection with their trade or business, and then claiming large sums as deductible expenses in assessing their income for purposes of taxation.

The learned Solicitor-General, appearing for the respondent, submitted, on the other hand, that the seventy-five per cent. of the expenses incurred by the salesmen in providing refreshments would really come under section 12 (*ab*) (iii) of the amending Act and that this sub-section embraces all forms of entertainment not only by a proprietor but also by an executive officer and an employee. The learned Solicitor-General invited this Court to hold that section 12 (*ab*) (iv) and (v) were enacted out of abundance of caution, as sub-section (iii) of the same section was wide enough to bring within its ambit the subsequent two sub-sections.

Although the word 'incurred' has been used in section 12 (*ab*) (i) in somewhat of a wider sense, nevertheless the same word is used in a restrictive sense in sub-section (iii) to mean entertainment expenses incurred only by the proprietor of a business. It is not possible for us to give the word 'incurred', as it occurs in sub-section (iii), a wider meaning to include entertainment expenses incurred not only by the proprietor but also by his executives and his employees, for the reason that specific provisions have been made regarding entertainment expenses incurred by the proprietors in sub-section (iii) and executives in sub-section (iv). If the contention of the learned Solicitor-General is to be accepted, then there was no necessity for the Legislature to have enacted sub-sections (iv) and (v) abovementioned. It is a cardinal rule of construction that, wherever possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to them (vide per Bowen L.J. in *Curtis v. Stovin* [1]). There is a presumption against the Legislature using surplus words in a statute. The reasons urged by the learned Solicitor-General are not adequate for us to depart from this presumption and his argument must therefore fail.

[1] *(1889) 22 Q. B. D. 512, 517.*

Section 12 (*ab*) (ii) of the amended Income Tax Ordinance (supra) allows only the sum of Rupees two thousand as travelling expenses to be deducted as expenses incurred in the production of income of a trade or business. Sub-sections (iii) and (iv) impose absolute prohibitions on any entertainment expenses which may be incurred by the proprietor or an executive in connection with the trade or business; sub-section (v) debars a proprietor from paying his executive officer any travelling or entertainment allowance. No restrictions, however, have been placed on the travelling or entertainment expenses, which may be incurred *by an employee* in connection with the trade or business.

The learned Solicitor-General also contended that Mr. Nadesan's argument is based on the maxim " expressio unius exclusio alterius ". Citing the observations of Lopes J., in *Colquhoun v. Brooks*[1], the learned Solicitor-General pointed out that while this maxim is a good master, it has proved to be a bad servant and should therefore be cautiously applied. Mr. Nadesan's argument, in our opinion, is not based on this maxim. Mr. Nadesan contended that where a taxing statute changes the law and introduces certain restrictions, it must be strictly construed and the restricting statute must only be allowed to operate to the extent to which it applies and no further.

Express and unambiguous language is absolutely indispensable in statutes passed for the purpose of imposing a tax (vide Craies on Statute Law (5th Ed.) (1952) by Sir Charles Odgers p. 106), for such a statute is always strictly construed (vide Maxwell on Interpretation of Statutes, (9th Ed.) (1946) by Sir Gilbert Jackson p. 126). In a taxing statute, therefore, if two constructions are possible, one in favour of the assessee and the other in favour of the assessor, the Court must adopt that construction which is favourable to the assessee.

We hold that the word ' incurred ' in section 12 (*ab*) (iii) of the amended Income Tax Ordinance (supra) does not cover the entertainment expenses incurred by the employees of the assessee in the instant case. Such a finding, no doubt, opens the floodgate to many malpractices, but that is a matter for the Legislature to remedy. Courts of law cannot arrogate to themselves the functions of the Legislature.

For these reasons, we are of opinion that the assessee is entitled to deduct as permissible deductions, the expenses incurred by his employees in entertaining the customers under section 12 of the amended Income Tax Ordinance (supra), for the years of assessment 1958–1959 and 1959–1960, respectively. The respondent must pay costs fixed at Rs. 105 to the appellant.

HERAT, J.—I agree.

Appeal allowed.

[1] *(1888) 21 Q. B. D. 52 at 55.*