1967 *Present :* **Tambiah, J., and Siva Supramaniam, J.**

THE COMMISSIONER OF INLAND REVENUE, Appellant, *and* THE WOODLAND (K. V. CEYLON) RUBBER & TEA COMPANY LTD., Respondent

S.C. 3/66—Income Tax Case Stated, BRA/333

Income tax—Non-resident company—Remittances of such company—Imposition of 33⅓ per centum tax thereon—Validity—Income Tax Ordinance (Cap. 242), as amended by Act No. 13 of 1959, ss. 5, 57A, 57B, 57C—Double Taxation Agreement (Treaty Series No. 9 of 1950), Articles VI and XVIII—Double Taxation (Relief) Act, No. 26 of 1950 (Cap. 244), s. 2—Inland Revenue Act, No. 4 of 1963, s. 130 (3)—Scope of rule generalia specialibus non derogant.

In regard to the income tax years 1958/59 to 1961/62, the imposition on any non-resident company of the tax of 33⅓ per centum on the remittances as set out in section 57 C (1) (*a*) of the Income Tax Ordinance (Cap. 242), as amended by Act No. 13 of 1959, is not in conflict with either Article VI or Article XVIII of the Double Taxation Agreement (Treaty Series No. 9 of 1950 between Ceylon and the United Kingdom), the provisions of which were given the force of law by the Double Taxation (Relief) Act No. 26 of 1950 (Cap. 244). Even if there is any conflict, the Income Tax (Amendment) Act No. 13 of 1959 impliedly repealed the provisions of the Double Taxation (Relief) Act No. 26 of 1950. The rule *generalia specialibus non derogant* cannot be applied in construing the amending Act No. 13 of 1959, which prevails over all earlier provisions governing tax payable by any resident or non-resident company. The fact that the Double Taxation (Relief) Act was formally repealed by the Inland Revenue Act No. 4 of 1963 makes no difference to the fact that the Income Tax (Amendment) Act No. 13 of 1959 had impliedly repealed it earlier.

CASE stated under section 78 of the Income Tax Ordinance (Cap. 242).

Walter Jayawardena, Q.C., Solicitor-General, with *Shiva Pasupathy*, Crown Counsel, for the appellant.

H. W. Jayewardene, Q.C., with *B. Eliyatamby* and *T. L. D. Fernando* for the assessee-respondent.

Cur. adv. vult.

December 18, 1967. TAMBIAH, J.—

This matter comes before this Court for its opinion on a case stated by the Board of Review under the provisions of section 78 of the Income Tax Ordinance (Cap. 242). Although the sum involved is comparatively small, this case raises matters of importance and the opinion sought for will have far reaching effects since the tax recovered for the four years in review will amount to a considerable sum.

It is a matter of common knowledge that the bulk of the non-resident companies, which are affected by the agreement entered into between the United Kingdom and Ceylon in the Treaty Series No. 9 of 1950, are "Sterling Companies", that is to say, companies which have their registered office in the United Kingdom. Some of them own large tea estates and others have entered into commercial ventures in this Island. The respondent is one of such non-resident companies.

The respondent appealed to the Board of Review against the assessment for the income tax years 1958/59, 1959/60, 1960/61 and 1961/62 on the ground that the imposition of a tax, under section 57(*c*) of the Income Tax Ordinance (Cap. 242) as amended by Act No. 13 of 1959, of 33⅓ per cent. on remittances was in contravention of Articles VI and XVIII of the Double Taxation Agreement (Treaty Series No. 9 of 1950, which will hereinafter be referred to as the Treaty), between the Government of the United Kingdom and the Government of Ceylon. The provisions of this agreement have been given the force of law by the Double Taxation (Relief) Act No. 26 of 1950 (Cap. 244). The relevant Articles of this Treaty are as follows :—

"Article VI—

Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any form of taxation chargeable in connection with or in lieu of the taxation of dividends, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived."

" Article XVIII—

(1) The residents of one of the territories shall not be subjected in the other territory to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the residents of the latter territory are or may be subjected.

(2) The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits attributable to their permanent establishments in that other territory, to any taxation which is other,

higher or more burdensome than the taxation to which the enterprise of that other territory, and, in the case of companies to which the enterprises of that other territory incorporated in that other territory are or may be subjected in respect of the like profits.

(3) In this Article the term ' taxation ' means taxes of every kind and description levied on behalf of any authority whatsoever.

(4) Nothing in this Article shall be construed as—(*a*) obliging either of the Contracting Governments to grant to persons not resident in its territory, those personal allowances, reliefs and reductions for tax purposes which are, by law, available only to persons who are so resident ; (*b*) affecting the additional rate of tax with which Article IX is concerned."

After the Kaldor Report was adopted with modifications in Ceylon, the basis of taxation underwent radical changes. Profits tax was abolished and the simple provisions governing income tax, applicable both to persons and companies, gave way to a more sophisticated method of taxation and the Income Tax Ordinance (Cap. 242) was accordingly amended by Act No. 13 of 1959. So far as persons are concerned, the computation of taxation is based on family units. The husband, the wife, and four children are given certain units and the income tax is based on slabs ranging according to the units. So far as companies are concerned, the profits tax and all the provisions of the Income Tax Ordinance under which companies were taxed earlier, were repealed and Chapter VIIIA of the Income Tax Ordinance was introduced by the amending Act of 1959.

The basis of taxation on resident companies is found in section 57 (B) which enacts as follows :—

" In respect of any year of assessment commencing on or after April 1, 1958, the tax to which a company resident in Ceylon in the year preceding such year of assessment shall be liable shall consist of—

(*a*) a sum equal to 45 per centum of the taxable income of such company for such year of assessment ; and

(*b*) a sum equal to $33\frac{1}{3}$ per centum of the aggregate amount of the gross dividends distributed by such company out of the profits on which the taxable income of such company is computed for such year of assessment."

The basis of taxation of non-resident companies is found in section 57 (C) of the Income Tax Ordinance which enacts as follows :—

" In respect of any year of assessment commencing on or after April 1, 1958 the tax to which a non-resident company shall be liable—

(*a*) shall, where there are remittances of such company in the year preceding such year of assessment, consist of a sum equal to 45 per centum, and an additional 6 per centum, of the taxable income of such company for such year of assessment and a sum which shall,

if the aggregate amount of such remittance is less than one-third of such taxable income, be equal to 33⅓ per centum of such aggregate amount and, if such aggregate amount is not less than one-third of such taxable income, be equal to 33⅓ per centum of one-third of such taxable income ; and

(*b*) shall, where there are no such remittances, consist of a sum equal to 45 per centum, and an additional 6 per centum, of such taxable income."

The imposition of a sum computable at the rate of 45 per centum of the taxable income of resident companies and the sum at the rate of 51 per centum of the income on non-resident companies, set out in section 57 (B) (1) (*a*) and section 57(C) (1) (*a*) of the Income Tax (Amendment) Act No. 13 of 1959, respectively, is not the subject matter of controversy as it is common ground that such taxes are within the terms of the Treaty. The only dispute is over the imposition on non-resident companies of 33⅓ per centum on the remittances as set out in section 57 (C) (1) (*a*) of the Income Tax (Amendment) Act No. 13 of 1959.

When this matter was argued before the Board of Review the appellant agreed that if there is any conflict between the provisions of section 57(C) of the Income Tax Ordinance and the provisions of the Double Taxation (Relief) Agreement, then it is the provisions in the agreement that must be given effect to. The appellant, however, strenuously maintained that there was no conflict between these provisions. The Board of Review has held that there is conflict and has sought the opinion of this Court on the point of law stated earlier.

The learned Solicitor-General who appeared for the appellant before this Court presented his arguments in a different vein. He stated that he is not bound by the concession of the appellant before the Board and urged that even if there is a conflict between the Double Taxation (Relief) Act No. 26 of 1950 and section 57 (C) (1) (*a*) of the Income Tax (Amendment) Act No. 13 of 1959, the provisions of the latter should prevail, not only because it is a later enactment but also because it was the clear intention of Parliament to do away with the existing tax measure affecting companies, both resident as well as non-resident, and to provide for a new and complete scheme of taxation of the aforesaid companies, by the amending Act of 1959. Therefore, he submitted that by necessary implication the Double Taxation (Relief) Act No. 26 of 1950 had been repealed.

Counsel for the respondent was not taken by surprise by the enunciation of this principle of law since he was given ample notice by the learned Solicitor-General. Although Counsel for the respondent formally objected to this matter being argued, he did not pursue it further.

It is a well known proposition that an admission on a pure question of law in a tribunal does not bind the Counsel who appears for the same party in a higher tribunal (vide *Attorney-General v. A. D. Silva*) [1]. *A fortiori*, in tax matters where the opinion of this Court is sought, the Court is not precluded from reconsidering a question of law which was not before the Board of Review. In *Fernando v. Commissioner of Income Tax* [2] it was held that sub-section 6 of section 78 of the Income Tax Ordinance empowers the Court to hear and determine any question of law arising on the case stated (vide *M. P. Silva v. Commissioner of Income Tax* [3]).

The learned Solicitor-General also contended that there is no conflict between the provisions of section 57 (C) of the Income Tax (Amendment) Act and Articles VI and XVIII of the Treaty Series, the terms of which were embodied in the Double Taxation (Relief) Act of 1950. Alternatively, he argued that should there be a conflict, the provisions of the Income Tax (Amendment) Act 13 of 1959 should prevail.

Mr. Jayewardene, Counsel for the respondent, urged that there was a conflict between section 57 (C) of the Income Tax (Amendment) Act of 1959 and Articles VI and XVIII of the Treaty Series, which were emb [illegible] Taxation (Relief) Act of 1950, in so far as section 57 (C) [illegible] amending Act seeks to impose a tax on a non-resident company governed by the agreement on its remittances which is in fact a form of taxation in lieu of taxation on its dividends. In any event, he said that this tax was a tax on undistributed profits of the company.

He also contended that section 57 (C) of the amending Act No. 13 of 1959 is in conflict with Article XVIII (2) of the Treaty, since this tax is either higher or more than the tax to which the resident companies are subjected to ; and in any event, it is a tax other than the tax which has been imposed on the resident companies of Ceylon.

Mr. Jayewardene further urged that the canon of construction enshrined in the maxim *generalia specialibus non derogant* should apply and the Treaty which was embodied in the Double Taxation (Relief) Act of 1950, being a special law, which is applicable to particular types of non-resident companies, caught up by the agreement, has not been impliedly repealed by section 57 (C) of the Income Tax (Amendment) Act of 1959 which is a general law applicable to taxation of other non-resident companies. He elaborated his contention and said that since the earlier Act gave effect to a bilateral Treaty, the Parliament could not have intended to abrogate it unilaterally by enacting section 57 (C) of the Income Tax (Amendment) Act No. 13 of 1959.

Firstly, it is convenient to consider the question whether the provisions set out in section 57 (C) of the amending Act of 1959 are in conflict with Articles VI and XVIII of the Treaty, which is embodied in the Double

[1] *(1953) 54 N. L. R. 529.* [2] *(1959) 61 N. L. R. 296 at 319.*
[3] *(1947) 1 Ceylon Tax Cases, p. 336.*

Taxation (Relief) Act of 1950. The learned Solicitor-General contended that the term "dividend", as used in Company law, is a term well known to Company lawyers and signifies the amount payable to a share holder out of the net profits of the company, as resolved by the Company. On the other hand, the remittances sent by a non-resident company from a branch office in Ceylon to its head office has no relation to the dividends that would ultimately be payable to the shareholders. A non-resident company may have business ventures throughout the world and may reap a good harvest from its investments abroad although from its properties or business in Ceylon nothing may be sent by remittances or only a small sum may be remitted to the head office. Conversely, the Ceylon office may send from their undertakings large profits whereas the non-resident company may suffer severe losses from its ventures abroad and, ultimately, no dividends may be payable to its shareholders.

The Board of Directors of a non-resident company may instruct the Ceylon office to invest the profits earned in Ceylon for a particular year or for a number of years in buying more estates, if it is an agricultural undertaking, or to enter into other businesses, if it is an industrial undertaking. Therefore no remittances may be made for that particular year or years to the head office, although dividends may be distributed to its shareholders from other business ventures outside Ceylon.

It is more profitable for a non-resident company if it accumulates its profits for a period of years and then remits them during an year succeeding a lean year. In such cases the tax payable cannot exceed the ceiling of one-ninth of the taxable income of the non-resident company for the previous year if the remittances are more than $33\frac{1}{3}$ per centum of the taxable income for that previous year. In this matter it may be legitimate for non-resident companies to wait till the taxable income for a particular year is low and obtain a tax relief of great magnitude, which the resident companies cannot avail themselves of in view of the specific provisions of the Income Tax (Amendment) Ordinance of 1959. Therefore, the remittances of a non-resident company are not the same as dividends nor is there any computable basis on which the relation between the two can be established.

Hence the provisions governing the tax on remittances by non-resident companies, imposed by section 57 (C) of the Income Tax (Amendment) Act No. 13 of 1959, are not in conflict with Article VI of the Treaty.

In this context Mr. Jayewardene asked us to look into the budget speech made by the then Finance Minister, who introduced this tax measure. The learned Solicitor-General stated that the proposals in a budget speech cannot be looked into by this Court in interpreting the provisions of a Parliamentary Statute. But he conceded that this Court could look into the facts set out in the budget speech by a Minister

in order to find out the intention of the Legislature in enacting a measure subsequently. In this context it may be useful to refer to the dictum of Lord Wright in *Assam Railways and Trading Co. v. Commissioner of Inland Revenue*[1]. In dealing with the question whether the report of a Royal Commission on Income Tax of 1920 could be looked into to interpret the provisions of the Finance Act of 1920, he said :

> " But on principle no such evidence for the purpose of showing the intention, that is the purpose or object, of an Act is admissible ; the intention of the Legislature must be ascertained from the words of the statute with such extraneous assistance as is legitimate ; as to this I agree with Farwell L. J. in *Rex v. West Riding of Yorkshire County Council* (1906 2 K.B. 676, 717) where he says : " I think that the rule is expressed with accuracy by Lord Langadale in giving the judgment of the Privy Council in the *Gorham Case* in Moore 1852 edition, p. 462, ' We must endeavour to attain for ourselves the true meaning of the language employed '—in the Articles and Liturgy—' assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject matter to which the instruments relate, and the meaning of the words employed '. In this House where the judgment of the Court of Appeal was reversed (*Attorney-General v. West Riding of Yorkshire County Council* (1907) A. C. 29), no reference was made to this point. *It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the Report of Commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted.*"

With respect, I would adopt the dictum of Lord Wright and hold that the proposals of the Minister in his Budget Speech, in which he said that regarding non-resident companies, he proposes to impose 33⅓ per cent tax on remittances and which will be deemed to be a tax on dividends, is not admissible because we do not know whether his proposals were adopted ultimately. Indeed, the learned Solicitor-General cited to us certain passages from the objects and reasons for the passing of this amending Act in which it is stated that the proposals of the then Minister of Finance were amended by the Cabinet.

On the other hand, there are several passages in the Minister's speech where he said that the finances of the State were in a parlous condition and therefore these tax proposals were brought in order to increase the revenue of the country. If these were the facts which prompted the Parliament to pass the amending Act of 1959, could it be said that they wanted to treat a non-resident company, caught up in the agreement, and the resident companies differently and imposed a tax of 33⅓ per centum of the gross dividends distributed by the resident companies in addition to the tax of 45 per cent on the taxable income, but intended to

[1] *(1935) A. C. 445 at 458.*

exempt such non-resident companies from paying any tax on its profits and remittances sent out and granted them a concession of paying only 51 per cent tax on their taxable income ? It is common knowledge that a good part of our revenue comes from tea and rubber, the main cash products of this Island, and is it likely that the Parliament wanted to exempt these " Sterling Companies " and other non-resident companies which are caught up by the agreement, from paying any tax other than a tax of 51 per cent on the taxable income ?

In support of the argument that $33\frac{1}{3}$ per cent tax imposed by section 57 (C) of the amending Act of 1959, on remittances of non-resident companies is a tax in lieu of dividends, Mr. Jayewardene submitted that the same percentage of $33\frac{1}{3}$ per cent is imposed on the dividends of resident companies as well as on the remittances of profits of non-resident companies. Therefore he argued that although the word ' remittances ' was used in section 57 (C) it was in fact a tax in lieu of dividends.

Mr. Jayewardene also contended that the dividends payable by the non-resident companies to its shareholders abroad is naturally affected by its remittances sent from Ceylon. No doubt the dividend payable would be affected by the profits that are sent from Ceylon but in that event no income tax can be imposed on profits, since the imposition of income tax on profits will naturally affect the dividends ultimately payable. Income tax is inherently a tax on profits and it is perfectly legitimate for any Government to tax the profits of a non-resident company and, therefore, when a tax is imposed on remittances which are sent by way of profits, it is only a method of computation of the income tax on profits and is not an attempt to tax the dividends.

Mr. Jayewardene's contention that the tax on remittances of non-resident companies imposed by section 57 (C) of the amending Act is, in any event, in the nature of an undistributed profits tax on undistributed profits of the company and therefore was in conflict with Article VI of the Treaty, is not tenable. When one refers to undistributed profits of a company, what is meant is the balance of the profits left over after paying dividends. The undistributed profits of a non-resident company can only be computed by first looking at the nett profits of that company derived from all its ventures and thereafter deducting fro n that amount the dividends already paid to the shareholders. It has, therefore, no direct connection with the dividends declared by a non-resident company. If remittances of profits sent by a branch office to the head office of a non-resident company do not have any computable relation to the dividends payable by a non-resident company to its shareholders abroad, it follows that the remittances sent from Ceylon to its head office have again no computable relationship with the undistributed profits of the company. Therefore a tax on profits remitted, as envisaged in section 57 (C) of the amending Act, is not a tax on the undistributed profits of a non-resident company.

The learned Solicitor-General also submitted that the provisions of section 57 (C) of the amending Act of 1959 are not in conflict with Article XVIII of the Treaty. He said that it has not been shown by the respondent, on whom the burden lies, that the taxation was wrong and that the tax imposed on non-resident companies under section 57 (C) of the amending Act is higher or more burdensome than the taxation on the resident companies of Ceylon. By a comparison of section 57 (B) with section 57 (C) of the amending Act it is clear that the resident companies in Ceylon have to pay 33⅓ per cent of the gross profits whereas no such tax is imposed on the non-rosident companies. As stated earlier, the non-resident companies have a greater advantage over the resident companies since they could wait for a lean year and send the profits, which have accumulated for a number of years and gain an advantage by paying 1/9th of the taxable income from that previous year. This advantage alone would outweigh all other disadvantages, if any, which a non-resident company may have in comparison with a resident company. This is a big concession given to foreign investors in Ceylon. The actual figures worked out by the Income Tax Department, which was not disputed before the Board of Review, is set out in page 2 of document X 1. The computations are in respect of the income tax years 1958/'59 to 1961/'62. A comparison has been made between the figures of the tax payable if it were a resident company. It will be seen from these figures, which are not disputed by the respondent, that if the respondent had been resident in Ceylon it would have paid a sum of Rs. 159,580 by way of a tax on dividends, whereas it paid only a tax of Rs. 35,893 for these years as tax on remittances. Therefore, by the imposition of 33⅓ per cent on the remittances as tax on non-resident companies by section 57 (C) of the amending Act, it has not been shown that this tax is more burdensome than the tax imposed on resident companies or that it is higher within the meaning of Article XVIII of the Treaty.

For the purposes of Article XVIII, one must take a comparable situation. Assuming that a resident company in Ceylon gets Rs. 10,000 as nett profits and a non-resident company also has the same profits, it has to be shown that as a result of the imposition of the remittance tax by section 57 (C) of the amending Act, the taxation is more burdensome or higher. The respondent has failed in discharge the burden on this point.

The next question is whether the tax imposed by section 57 (C) of the amending Act is an " other " tax other than tax imposed on a resident company. The learned Solicitor-General submitted that the tax imposed by section 57 (C) of the amending Act is Income Tax, computed and calculated in the same way as any other component of income tax and therefore is not any other tax but income tax. He submitted that Income Tax is one tax, although its components and the method of calculation may be different. Mr. Jayewardene, on the other hand, urged that

there is no taxation on remittances of profits of resident companies, whereas there is a taxation on remittances of profits of non-resident companies and, therefore, the tax imposed by section 57 (C) of the Income Tax (Amendment) Act is a tax other than a tax imposed on a resident company. I am unable to appreciate the argument of the Counsel for the respondent. In the first place I find it difficult to visualize a resident company sending profits by way of remittances abroad. It may have branch offices in various parts of the world. If remittances are sent they are not remittances of profits. Remittances may be sent in order to purchase articles for the purpose of the business or to defray the expenses of its offices abroad. The tax imposed on the remittances sent as profits of a non-resident company is only a component of the income tax payable by such company. Therefore, I hold that it is not a tax other than income tax, and that section 57 (C) of the amending Act of 1959 does not contravene Article XVIII of the Treaty.

For these reasons I am of the view that section 57 (C) of the amending Act is not in conflict with either Article VI or Article XVIII of the Treaty. This view alone should dispose of this matter but in view of the fact that the matter has been fully argued, it is necessary also to consider the proposition put forward by the learned Solicitor-General, namely, that even if there is a conflict, the rule of construction enshrined in the maxim *generalia specialibus non derogant* has no application in this matter.

It is necessary for this purpose to construe the provisions of section 57 (A) of Cap. VIII (A) which was brought in by the Income Tax (Amendment) Act No. 13 of 1959. It enacts as follows :—

" 57A. (1) In respect of any year of assessment commencing on or after April 1, 1958—

(*a*) the rate or rates of the tax referred to in section 5, and

(*b*) the provisions of Chapter VII and the provisions of section 43 other than sub-section (1A) and subsection 3 of that section,

shall not apply to *any resident or non-resident company.*

(2) The provisions of subsection (1A) of section 43 shall not apply *to any resident company* after April 30, 1959, and the provisions of sub-section (3) of that section shall not apply to any person after March 31, 1960. "

The repealing of the provisions of the " rate or rates of the tax " referred to in section 5 of the principal Act and the words " *any resident or non-resident companies* " are of significance. It shows that any type of non-resident company is caught up by these provisions and the legislature did not intend to make a distinction between non-resident companies, caught up by the agreement contained in the Treaty, and

other types of non-resident companies. This disposes of Mr. Jayewardene's arguments that the intention of the Legislature was not to repeal the Double Taxation (Relief) Act which gave effect to the provisions of the Treaty and the Income Tax (Amendment) Act No. 13 of 1959 was only applicable to those non-resident companies which are not governed by the Treaty.

Relying on the case of *Ostime v. Australian Provident Society* [1], Mr. Jayewardene urged that we should hold that the Double Taxation (Relief) Act of 1950 is still in force and should be applied to the non-resident companies governed by the treaty and that the general Act only applies to non-resident companies, which were not contemplated by the Treaty entered into between the United Kingdom and Ceylon. In *Ostime's Case*, the Australian Mutual Insurance Company, resident in Australia, carried on business in Australia through a branch office in London, in the United Kingdom. This company was assessed to pay the United Kingdom income tax for the years of assessment 1947/48 to 1953/'54 inclusive, on the notional amount of its profits in the United Kingdom, computed by reference to the appropriate part of the investment income of its life assurance fund under rule 3 of Case III of Schedule D to the Income Tax Act, 1918, or (in the later years), section 430 of the Income Tax Act, 1952. It was the contention of the company that it was assessable only under the Double Taxation Relief (Taxes on Income) Australia Order, 1947, which gave effect to the Australian Double Taxation Relief Agreement that was set out in the schedule to the order.

The House of Lords (Lord Denning dissenting) held that the company should not be taxed under rule 3 of Case III of Schedule D to the Income Tax Act, 1918 (or section 430 of the Income Tax Act, 1952), because the hypothesis on which such an assessment was based (namely, that the world income from the investments of the life fund formed the first stage in the rule 3 calculation of profits) was inconsistent with the basis of taxation under Article III (3) of the Double Taxation Relief Agreement (which proceeded on the hypothesis that the branch in England was an independent enterprise) and the latter prevailed.

As stated in the Editorial Note of the All England Reports in *Ostime's Case* (at page 246), *the Double Taxation Relief (Taxes on Income) (Australia) Order, 1947, which was made under the repealed Finance Act No. 2, 1945, section 51 (1) was kept in force by virtue of section 528 (2) of the Income Tax Act, 1952, as if made under section 347 of that Act.*

Therefore the Double Taxation Relief (Taxes on Income) (Australia) Order, 1947, although repealed by the Finance Act No. 2 of 1945, was kept in force by virtue of section 528 (2) of the Income Tax Act, 1952. It is clear, therefore, that the provisions of the Double Taxation Relief

[1] *(1959) 3 All E. R. 245.*

Act were specially preserved and the only question that the Court had to decide was whether the taxing authorities were justified in ignoring the provisions of the Double Taxation Relief Act *which were expressly kept in force.*

In *Ostime's case* it was never contended that the later Act repealed the earlier Act by implication. Lord Radcliffe who delivered the majority judgment said (vide (1959) 3 A. E. R. at 250) :

> " The question we have to determine is how this method of attributing a profit to a life assurance company, whose head office is outside the United Kingdom, stands up against the provisions of the Double Taxation Relief Agreement. I should find nothing surprising in the conclusion that it had been superseded. Rule 3 was an attempt at a unilateral solution of this particular aspect of double taxation in which the Australian taxing authorities were certainly no less interested than the authorities of the United Kingdom. Bilateral agreements for regulating some of the problems of double taxation began, at any rate so far as the United Kingdom was concerned, in 1946. The form employed which, for obvious reasons, employs similar forms and similar language in all agreements, is derived, I believe, from a set of model clauses proposed by the financial commission of the League of Nations. The aim is to provide by treaty for the tax claims of two governments both legitimately interested in taxing a particular source of income either by resigning to one of the two, the whole claim or else by prescribing the basis on which the tax claim is to be shared between them. For our purpose it is convenient to note that the language employed in this agreement is what may be called international tax language, and that such categories as 'enterprise', 'commercial or industrial profits' and 'permanent establishment' have no exact counterpart in the taxing code of the United Kingdom."

As stated earlier, in that case the Double Taxation Relief Agreement, which was entered into between the Commonwealth of Australia and the United Kingdom, was kept in force by section 347 of the Income Tax Act of 1952. It sets out a special mode of computation of income tax on Australian Companies which were not resident in the United Kingdom but which carried on business in the United Kingdom. They could only be taxed on the investments in England, as if they were carrying on a separate business and not on their world income basis. Therefore that case is not an authority supporting the proposition of an implied repeal by the application of the canon of construction set out in the maxim *generalia specialibus non derogant.*

The rule *generalia specialibus non derogant* is only a presumption and cannot be elevated to a rule of law, because no Parliament of Ceylon can bind a future Parliament. In view of the clear provisions of the amending

Act of 1959, set out earlier, which repeals all previous legislation governing the basis of taxation of companies and in view of the provisions of the earlier legislation governing the taxation of *any company, both resident and non-resident*, having no application after April 1958, it is my view that this canon of construction cannot be applied in construing this Act and the amending Act of 1959 has repealed, by necessary implication, any previous Acts dealing with the taxation of companies both resident and non-resident.

The taxing authorities can only look into the provisions of Chapter VIIIA and other provisions of the amending Act of 1959 for the taxation of both resident and non-resident companies after the amending Act of 1959 came into force. Unlike the provisions in the Income Tax Act of 1952 of the United Kingdom, there is no provision in the Income Tax (Amendment) Act No. 13 of 1959 which keeps alive the provisions of the Double Taxation (Relief) Act of 1950. On the other hand, the amending Act of 1959 has swept away all provisions governing the taxation of *any company, resident or non-resident*, and the Legislature has also repealed the Profits Tax Act and has enacted comprehensive provisions in the Amending Act of 1959 for the taxation of all companies.

Mr. Jayewardene also urged that section 2 of the Double Taxation (Relief) Act of 1950 enacts that " notwithstanding anything in any other written law " the agreement in the Treaty will have the force of law. He therefore contended that the Double Taxation (Relief) Act of 1950 should have priority over all subsequent Acts. By the use of these words the Parliament did not intend to tie the hands of future Parliaments. It only dealt with legislation *in pari materia* and therefore gave priority to this Act over all other Acts governing taxation which existed at the time this Act was passed. If Mr. Jayewardene's contention is to be accepted then serious inroads would be made into the supremacy of the Parliament of Ceylon, because a Parliament can then bind a future Parliament.

It is an elementary rule of construction that the earlier Act must give place to the later, if the two cannot be reconciled, *lex posterior derogat priori*. An Act can repeal another Act either by express words or by necessary implication. However, a repeal by implication should not be favoured and must not be imputed to a legislature without necessity or strong reason (vide Broom's Legal Maxims, 5th Ed., page 348). The maxim *generalia specialibus non derogant* only creates a presumption. But in this case the presumption is greatly weakened in view of the fact that the agreement entered into between the United Kingdom and Ceylon, which was embodied in the Treaty, could be resiled from by either government after a period of four years and the amending Act was

enacted after the expiration of this period. But if a statute is unambiguous, its provisions should be followed, even if they are contrary to International Law (vide Maxwell's Interpretation of Statutes, 11th Edition, p. 142). Only where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, the maxim *generalia specialibus non derogant* would apply (vide Maxwell's Interpretation of Statutes, 11th Edition, p. 168, 169). It cannot be said, in the instant case, that these considerations exist for the application of this rule of construction. As Maxwell states " In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for the special one." (ibid. p. 169).

To sum up, in view of the clear provisions of the Income Tax (Amendment) Act No. 13 of 1959, which repeal the very basis of taxation contained in section 5 of the Income Tax Act and which introduce new provisions which apply to *any* resident or non-resident company, without making any distinction between a resident company and a non-resident company caught up by the agreement in the Treaty and other non-resident companies, I am of the view that the provisions of the Income Tax (Amendment) Act of 1959 should prevail over all earlier provisions governing tax payable by companies. The fact that the Double Taxation (Relief) Act was formally repealed by Act No. 4 of 1963 makes no difference to the question whether the Income Tax (Amendment) Act of 1959 has impliedly repealed it earlier. The Legislature, through an abundance of caution, repealed the relevant provisions of the Double Taxation (Relief) Act which were already repealed by implication when the Income Tax (Amendment) Act of 1959 came into force.

For these reasons I am of opinion that the provisions of section 57 (C) of the Income Tax (Amendment) Act No. 13 of 1959 are not in conflict with Articles VI and XVIII of the Treaty entered into between Ceylon and the United Kingdom and found in Treaty Series No. 9 of 1950. Even if they are in conflict I am of opinion that the Income Tax (Amendment) Act No. 13 of 1959 has impliedly repealed the provisions of the Double Taxation (Relief) Act of 1950 on this matter and the amending Act of 1959 should prevail. The case is remitted for the tax to be assessed on this basis.

The appellant is entitled to costs of appeal.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.