

1962

Present : T. S. Fernando, J., and Tambiah, J.

D. F. R. MALLOWS, Appellant, and COMMISSIONER
OF INCOME TAX, Respondent

S. C. 3 of 1961—Income Tax Case Stated, BRA/289

Income tax—Place of residence provided rent free by an employer—Determination of its rental value—“ In the opinion of the Commissioner ”—Income Tax Ordinance (Cap. 242), ss. 5, 6 (1), 6 (2) (a), 6 (2) (b), 6 (2) (c).

Where a person is liable under section 6 (2) (a) of the Income Tax Ordinance to pay income tax in respect of the rental value of a place of residence provided rent free to him by his employer, the rental value of the place of residence should be determined on the basis of the annual value as assessed by the local authority, unless an opinion has been expressed by the Commissioner, in terms of section 6 (2) (b), that the assessment by the local authority does not accurately represent the annual value of the premises.

Case stated under the Income Tax Ordinance.

H. V. Perera, Q.C., with *S. Ambalavanar*, for the Assessee-Appellant

M. Kanagasunderam, Crown Counsel, for the Commissioner.

Cur. adv. vult.

June 15, 1962. T. S. FERNANDO, J.—

The Assessee-Appellant, during the years of assessment 1955-56, 1956-57, 1957-58 and 1958-59, was provided by his employer with a place of residence free of rent. The employer had for the purpose of so providing a place of residence for the appellant entered into a lease with one landlord for a period of three years commencing from 1st February 1952 paying him a rent of Rs. 5,580/- per annum in respect of one place of residence and into another lease with another landlord for a period of 5 years commencing from 1st October 1955 paying him a rent of Rs. 9,300/- per annum in respect of the other place of residence. These respective places of residence had been assessed for rating purposes by the Colombo Municipal Council and the annual values so assessed were much lower, being Rs. 2,500, 2,667, 3,173 and 3,690 respectively for the years of assessment referred to above.

Under section 5 of the Income Tax Ordinance, income tax for any year of assessment becomes chargeable in respect of the profits and income of every person for the year preceding the year of assessment. Section 6 (1) of the Ordinance defines profits and income as meaning, *inter alia*, the profits from any employment, while section 6 (2) (a) defines

“ profits from any employment ” as including the rental value of any place of residence provided rent free by the employer. The appellant became liable, therefore, to pay income tax in respect of the rental value of the place of residence provided rent free by his employer. That, of course, is undisputed.

Dispute arose in regard to the manner in which the rental value was to be computed. It was the appellant's contention that, as the annual value of the two places of residence concerned have both been assessed for rating purposes by a local authority, section 6 (2) (b) of the Ordinance requires that the annual value so assessed, adjusted as specified in the said section and in section 6 (2) (c), shall be considered to be the rental value for the purpose of the section. For the Commissioner, it was contended that inasmuch as section 6 (2) (b) enacts that for the purposes of section 6 the net annual value of a place of residence shall be determined on the basis of the rent which a tenant might reasonably be expected, taking one year with another, to pay for such a place of residence (the tenant paying rates and the owner bearing the cost of repairs), subject to a deduction of twenty *per centum* for repairs and other expenses, the appellant was liable to be assessed for income tax on the basis of the rent actually paid with suitable adjustment depending on the incidence of the payments for rates and repairs. The Board of Review agreed with the contention advanced on behalf of the Commissioner and held that the rental values of the two places of residence had been correctly fixed at Rs. 5,580/- and Rs. 9,300/- per annum.

Before we could enter upon a consideration of the merits of the respective contentions we were called upon to address our minds to the following question which has been raised as a question of law :—

“ Whether there was any evidence of the opinion of the Commissioner that the assessment made by the local authority does not accurately represent the annual value of the premises in question and, if there was, whether there was any evidence on which the Commissioner could have properly formed such opinion? ”

In regard to the first part of this question, no document embodying an opinion of the Commissioner to the effect indicated above was made available to us. As the case stated contains a paragraph (paragraph 10) which reads that “ as the rent paid by the employer in respect of 43, Galle Face Court and 49, Turret Road was considerably in excess of the annual value assessed under the Municipal Councils Ordinance the Commissioner of Inland Revenue was of opinion that the assessment by the Colombo Municipal Council did not accurately represent the annual value of the two premises for the years of assessment 1955-56 to 1958-59 ” we requested learned counsel for the Commissioner to inform us whether such an opinion has in fact been expressed by the Commissioner. Learned Crown Counsel informed us, after the conclusion of the argument and after reference to the office of the Commissioner, that no such opinion

has been expressed in connection with the present case, but that the Commissioner is generally of opinion that where the assessments of annual values made by local authorities are much lower than rents actually paid by tenants the local authorities' assessments do not accurately represent the annual values of the places of residence. I do not think that this kind of general opinion entertained by the Commissioner is included in the expression "the opinion of the Commissioner" specified in section 6 (2) (b). The opinion must not only be entertained generally, so to say, in the mind of the Commissioner, but the matter must be taken a step further and translated into words in a document so as to serve as evidence to guide those functionaries who have the legal duty cast on them to determine "net annual value" for the purposes of the section 6 of the Income Tax Ordinance. In this state of affairs it does not appear to me to be necessary to enter upon a consideration of the respective contentions in regard to the manner of assessment. The rental value of the places of residence provided by the employer should, in my opinion, in the circumstances here present, be determined on the basis of the annual value as assessed by the Colombo Municipal Council.

Although this appeal calls to be disposed of on the ground that there is no evidence here of any opinion of the Commissioner which is a condition precedent for not equating the net annual value of a place of residence for the purposes of section 6 to its annual value as assessed for rating purposes by a local authority, Mr. Perera invited us to express our opinion on the merits of the respective contentions advanced on behalf of the parties in regard to the manner of assessment. I have given consideration to this request of learned counsel, but as any opinion we may express on that question in the present circumstances would not be so much a decision but a mere *obiter dictum*, I think the better course to take would be to permit that question of law to be decided in another case in the future when perhaps there may be (a) fuller argument than was had before us and (b) more evidence presented by the parties than was placed in this case before the Board of Review.

In view of the decision we have reached and expressed above on one of the questions of law raised, I would set aside the order made by the Board of Review and remit the case to the Board so that a revised assessment in accordance with our opinion may be made.

The appellant is entitled to his costs in this Court and to the return of the fee paid by him in terms of section 78 (1) of the Ordinance.

TAMBIAH, J.—I agree.

Order of Board of Review set aside.