

1965 *Present : Abeyesundere, J., and G. P. A. Silva, J.*

COMMISSIONER OF INLAND REVENUE, Appellant,
and J. DE FONSEKA, Respondent

S. C. 1/65—Income Tax BRA/325

Income Tax Ordinance—Section 6—“ Profits from any employment ”—“ Holiday passage ”.

The value of a free air passage granted as a “ favour ” by Air Ceylon to an employee of that body is not part of his profits from any employment within the meaning of section 6 of the Income Tax Ordinance.

CASE stated under section 78 of the Income Tax Ordinance.

V. Tennekoon, Q.C., Solicitor-General, with *P. Naguleswaran*, Crown Counsel, for the appellant.

H. V. Perera, Q.C., with *N. Nadarasa* and *K. Kanthasamy*, for the respondent.

September 15, 1965. ABEYESUNDERE, J.—

The question of law that arises from this case stated under section 78 of the Income Tax Ordinance for determination by this court is whether the value of the free air passage granted by the body called Air Ceylon to the assessee-respondent, who is an employee of that body, is part of the assessee-respondent’s profits from any employment within the meaning of Section 6 of the said Ordinance, and if such value is part of such profits, what is such value.

The free air passage granted by Air Ceylon to the assessee-respondent is a “ holiday passage ” according to the appellant who is the Commissioner of Inland Revenue. As Section 6 of the Income Tax Ordinance

declares that the expression “ profits from any employment ” includes a holiday passage, the expression “ holiday passage ” must be interpreted by reference not only to that expression but also to the expression “ profits from any employment ”. If a holiday passage is received from any employment, its value is part of the profits from that employment. It is, therefore, necessary to interpret the meaning of the expression “ from any employment ”. I am of the view that the expression “ from any employment ” means “ in reference to service rendered in any employment ”. There is support for this view in the following passage from the judgment of Upjohn, J. in the case of *Hochstrasser (H. M. Inspector of Taxes) v. Mayes*, which is quoted with approval by Viscount Simonds, L.J., in his judgment in appeal in that case to the House of Lords :—“ In my judgment, the authorities show that to be a profit arising from the employment the payment must be made in reference to the services the employee renders by virtue of his office, and it must be something in the nature of a reward for services ” (*38 Reports of Tax Cases at page 705*).

According to the Staff Travel Scheme set out in the case stated, a free air passage granted under such Scheme is a “ favour ” which is granted by the officer of Air Ceylon competent to do so under such Scheme to an employee of Air Ceylon who has rendered service for not less than one year or to a member of the family of such employee. The reference to service for not less than one year is for the purpose of limiting the class of employees from whom or from whose families the recipient of such favour may be selected. The selection of a recipient of such favour is dependent on the arbitrary choice of the officer of Air Ceylon competent under such Scheme to grant such favour. Although the employees of Air Ceylon who are eligible to ask such favour are determined by reference to their services in their employments under Air Ceylon, the grant of such favour is not in reference to the service of the recipient of such favour in his employment under Air Ceylon. I, therefore, hold that the grant of the free air passage to the assessee-respondent by Air Ceylon was not in reference to his service in his employment under Air Ceylon and that consequently such free air passage was not received by him from any employment within the meaning of the expression “ from any employment ” as interpreted by me above. Accordingly I am of the opinion that the value of the free air passage granted by Air Ceylon to the assessee-respondent is not part of his profits from any employment. In view of this opinion it is unnecessary for me to determine the value of the free air passage granted by Air Ceylon to the assessee-respondent.

The assessee-respondent is entitled to his costs of the proceedings in this Court and such costs shall be paid by the appellant who is the Commissioner of Inland Revenue.

G. P. A. SILVA, J.—I agree.

Appeal dismissed.