1940 *Present :* **Soertsz and Keuneman JJ.**

THORNHILL *v.* THE COMMISSIONER OF INCOME TAX.

IN THE MATTER OF AN APPEAL UNDER SECTION 74 OF THE INCOME TAX ORDINANCE.

S. C. No. 131.

Income Tax—Profits or income—Proceeds of sale of tea and rubber coupons—Income Tax Ordinance, ss. 6 (1) (a) and 6 (1) (h) (Cap. 188).

Income tax is payable on proceeds of the sale of coupons issued under the Tea and Rubber Control Ordinances.

Where an assessment is made under the wrong category the assessor is not precluded from claiming that it comes under any other category in 6 (1) of the Income Tax Ordinance.

THIS was a case stated to the Supreme Court by the Board of Review under section 74 of the Income Tax Ordinance.

The question stated to the Supreme Court was whether a sum of Rs. 19,622.19 realized by the sale of rubber and tea coupons constitutes profit or income within the meaning of section 6 (1) (*a*) or alternatively under section 6 (1) (*h*) or whether the said sum represents a realization of capital and is therefore not liable to tax; and also whether the assessor was wrong in describing and assessing the amount in question as agricultural income, and, if so, whether the assessment is null and void or whether the irregularity or mistake, if any, is covered by section 68 of the Ordinance.

H. V. Perera, K.C. (with him *S. Nadesan* and *C. Renganathan*), for assessee, appellant.—The price realized by the sale of the coupons is not taxable. The coupons themselves are not income but are mere documents entitling the holder to export a certain amount of rubber and tea. The coupon in the hands of an exporter cannot be regarded as income from any tea or rubber estate belonging to him. It is a right of export given to a person irrespective of whether he actually produces rubber or not.

"Profits" and "income" are defined in section 6 of Income Tax Ordinance. Income is not the same thing as receipt of money or money's worth. It must come from some economic source like capital or labour. The relation of income to its source should be similar to that of the fruit to a tree or of the crop to a field—*Pool v. the Guardian Investment Trust Co., Ltd.*[1] The meaning of "source of income" has been considered in the following cases:—*Fitzgerald v. The Commissioners of Inland Revenue*[2]; *Commissioner of Income Tax, Bengal v. Shaw Wallace & Co.*[3]; *In re Jyoti Prasad Singh Deo of Kashipur*[4]; *Leeming v. Jones*[5]; *Brown v. National Provident Institution*[6]; *Scoble et al. v. Secretary of State for India*[7].

Income, to be taxable, should be derived from the use of the economic source and not from the conversion of it into money—*F. H. Page v. W. Butterworth*[8]; *A. G. Shingler v. P. Williams & Sons*[9].

[1] *8 T. C. 167 at 178.*
[2] *7 T. C. 284 at 287.*
[3] *A. I. R. (1932) P. C. 138.*
[4] *A. I. R. (1921) Patna 103.*
[5] *15 T. C. 333 at 349.*
[6] *L. R. (1921) A. C. 222.*
[7] *4 T. C. 478 at 486.*
[8] *12 Annotated T. C. 541.*
[9] *12 Annotated T. C. 65.*

H. H. Basnayake, C.C., for Commissioner of Income Tax, respondent.—The income which has been taxed falls under either section 6 (1) (*a*) or section 6 (1) (*h*).

Nobody who is not owner or possessor of rubber or tea plantations is entitled to coupons. Coupons are not of the nature of a grant or gift. Income from coupons is a part of the income from the land and is inseparable from possession of the land. According to the schemes of the Rubber Control Ordinance, No. 63 of 1938, and the Tea Control Ordinance (Cap. 299) and the rules passed thereunder, assessment each year is based on the productive capacity of the estate. See definition of "proprietor" in section 71 of the Rubber Control Ordinance; also sections 14, 17, 23, 26, 30, 33, 36, 37, &c.

On the question whether a particular receipt is capital or income, the meaning of "income" is dealt with in sections 2, 5 and 6 of Income Tax Ordinance. The word "source" in Income Tax law does not have a meaning different from its ordinary meaning; it is not a legal concept and has no technical meaning—*Baldwin and Gunn on Income Tax Laws of Australia (1937 ed.), p. 152; Cunningham and Dowland on Land and Income Tax Law and Practice, p. 227; Lamb v. The Commissioners of Inland Revenue*[1]; *Commissioner of Taxes v. Booysens Estates, Ltd.*[2] The meaning of income is discussed by *Baldwin and Gunn at p. 3* where reference is made to *Tennant v. Smith*[3]; *Attorney-General of British Columbia v. Ostrum*[4]; *The Hudson's Bay Co., Ltd. v. Stevens*[5].

H. V. Perera, K.C., in reply.—A coupon is only a licence to export. That it is transferable is only an accident. Capital asset when converted into money does not become income.

Cur. adv. vult.

April 29, 1940. SOERTSZ J.—

This is a case stated under the provisions of the Income Tax Ordinance. but the questions which arise for consideration are so closely connected with the Tea and Rubber Control Ordinances that brief reference to them is necessary. Both these Ordinances restrict owners of tea and rubber lands to a certain exportable maximum of their potential produce, and provide for the issue of coupons which are exchangeable for licences to cover the export of that maximum, and no more. The owners are not, however, involved in any obligation to produce the maximum allotted to them, or any part of it, in order to obtain these coupons. The coupons, when issued, are transferable and saleable. The resulting position is that it lies at the option of tea and rubber landowners whether they will harvest their produce and use their coupons to obtain export licences and export their maximum, and so obtain their income, or whether they will obtain their income by transferring or selling their coupons, or by using part of the coupons themselves and selling the remainder. These Ordinances leave the owners free to produce more than their allotted maximum but that excess will be sterile unless these owners are able, by means of coupons, to provide themselves with export licences to cover it. Put in a few words, the scheme of the two Ordinances is to establish a co-operative

[1] *18 T. C. 212 at 217.*
[2] *S. A. L. R. (1918) A. D. 576.*
[3] *3 T. C. 158.*
[4] *L. R. (1904) A. C. 144.*
[5] *5 T. C. 424.*

agricultural undertaking, that is to say, a co-operative business in which all tea and rubber landowners work together in order to put on the world's market the quota, or as near it as possible, of tea and rubber allotted to this Island. But they need not all work in the same way or with the same intensity. Indeed, some hardly work their lands at all, and yet they contribute to the end in view, for it may be truly said that "they also serve who only stand and wait", inasmuch as they enable others to produce usefully more than they would otherwise produce, in view of the restriction imposed. Ultimately, these tea and rubber landowners acting thus together produce the quota, and, in view of their active or inactive collaboration, it may, with justification, be said that each has disposed his land to produce the individual quotas of tea and rubber that go to make up the Island's quota.

To come now to the facts of this case. The appellant before us is the owner of tea and rubber estates. In the income tax year with which this appeal is concerned, he received the tea and rubber coupons to which he was entitled. He made use of some of these coupons to obtain export licences for himself, and sold others in the market to the value of Rs. 19,622.19. In the return of income which he made to the Commissioner he showed these proceeds from the sale of coupons in the class "Income from Agriculture", but when the Assessor taxed this amount as "Profits from Agriculture" he was dissatisfied and appealed against the assessment to the Commissioner of Income Tax on the ground that "proceeds of sale of coupons are not agricultural income as described in section 31 (2), nor any income liable to tax under the Ordinance". The Commissioner rejected his appeal and confirmed the assessment. The appellant then appealed to the Board of Review, and, as is to be gathered from the terms of the decision of that Board, he pressed his appeal before them on the grounds:—

(*a*) That the amount in question is not assessable income inasmuch as —he contended—it does not fall within the range of section 6 (1) of the Ordinance;

(*b*) That the Assessor "has wrongly indicated that the amount is assessable as agricultural income";

(*c*) That "the proceeds of sale of the coupons constituted capital and were therefore free from liability to tax".

The Board refused to entertain any of these submissions and ruled that "the value realized by the sale of coupons . . . . comes within the range of section 6 (1) (*a*). If it does not come in under section 6 (1) (*a*), it falls within section 6 (1) (*h*)".

Dissatisfied with this decision, the appellant asked the Board to state a case for the opinion of this Court, and the case stated to us is "whether the said sum of Rs. 19,622.19 constitutes profits or income within the definition of 'profits' or 'income' under section 6 (1) (*a*), or alternatively under section 6 (1) (*h*); or whether the said sum represents a realization of capital and is, therefore, not liable to tax; and also, whether the Assessor was wrong in describing and assessing the amount in question as agricultural income, and, if so, whether the assessment is . . . . null and void, or whether the irregularity or mistake, if any, is covered by section 68 of the Ordinance".

In my opinion, there is no substance in the appellant's contention that inasmuch as the Assessor has described this amount as agricultural profits he must either stand or fall by that description, and that if, in point of fact, this is not "agricultural income", the assessment is null and void notwithstanding the fact that the assessment of tax might properly have been made under some other category of section 6 (1). This, I think, is a mere battle of words.

The real question involved is whether this amount is assessable to tax under any of the classifications set forth in section 6 (1) of the Income Tax Ordinance, for, if I may permit myself the observation, to the Income Tax Commissioner it is the thing and not the name that matters. To him the thing that is "income" is like the fragrant rose: it smells as sweet by any name.

Similarly, I am of opinion that the appellant's contention that the proceeds of the sale of the coupons constituted a receipt of capital and not of income is wholly untenable as is sufficiently shown by the observations made on that contention by the Commissioner and by the Board of Review. I should state here that these submissions were not adopted by the appellant's Counsel in the course of his very able argument before us, and I have made this brief allusion to them only because they have been raised by the case stated to us for decision.

The one question that was debated with great vigour before us was whether this amount could be assessed as "income" either under section 6 (1) (*a*) or under section 6 (1) (*h*). Counsel for the Commissioner of Income Tax rightly conceded that it did not fall within any of the other classes of "profits and income" or "profits" or "income" enumerated in section 6 (1).

Now, this word "income", although it is on everybody's lips and runs like a tune—sometimes, a bad one—in everybody's head, is a baffling sort of word when it comes to defining it for the purpose of the Income Tax Ordinance. The Ordinance itself, after a feeble attempt to define it synonymously with "profits", resorts in section 6 (1) to the less ambitious method of enumeration, and sets forth the sources of profits and income in contemplation as sources from which assessable income is derivable. We are, therefore, compelled to search for the meaning of this word "income" in the pages of case law.

We are told, for instance, in *Tennant v. Smith*[1] that for income tax purposes 'income' "must be money or something capable of being turned into money". But obviously this statement needs qualification. All money and all things capable of being turned into money are not necessarily "income" for tax purposes, for, as explained in the case of *The Attorney-General of British Columbia v. Ostrum*[2], "the word 'income' is not a term of art, and what forms of receipts are comprehended within it, and what principles are to be applied to ascertain how much of these receipts ought to be treated as income, must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as the Statute states or indicates an intention that receipts which are not income

[1] *(1892) A. C. 150.*

[2] *(1904) A. C. 111.*

in ordinary parlance are to be treated as income", and, I would venture to add, except in so far as the Statute states that receipts which, in ordinary parlance, appear to be income are not to be treated as income.

Again, Sankey J. in the course of his judgment in *Pool v. The Guardian Investment Trust Co., Ltd.*[1], observed that "as Mr. Justice Pitney points out in giving the judgment of the Supreme Court of the United States of America . . . . . the fundamental relation of capital to income has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs, the latter as the outlet stream to be measured by its flow during a period of time". He cites various definitions, one of which was that "income may be defined as the gain derived from capital, from labour, or from both combined", and points out that "the essential matter is that income is not a gain accruing to capital, but again derived from capital".

Cunningham and Dowland in their treatise on *Land and Income Tax Law and Practice* examine a number of cases in which the meaning of the word "income" has been considered, and they sum up the essentials of "income" as follows at page 128:—

"The essential characteristics appear to be the following:—

(*a*) It must be a gain.

(*b*) It must actually *come in*, severed from capital, in cash or its equivalent.

(*c*) It must be either the produce of property or/and the reward of labour or effort.

(*d*) It must not be a mere change in the form of, or accretion to, the value of articles in which it is not the business of the taxpayer to deal.

(*e*) It must not be a sum returned as a reduction of a private expense."

This statement, if I may say so, provides adequate tests by which to ascertain whether a particular receipt is "income" or not, and all that now remains to be done is to examine the amount involved in this case by these tests, or at least by as many of them as are applicable. To take them one by one, there can be no question but that:—

(*a*) This amount represents a gain: in fact, in his return, the appellant showed it as income;

(*b*) It has actually come in, in the sense that it has reached the hands of the appellant, ultimately in the form of cash, and as cash severed from capital;

(*c*) In a sense, it is the produce of property, for it has been produced from the sale of coupons which were issued to him under these Ordinances to cover his produce, real or hypothetical.

Counsel for the appellant, however, strongly contended that these coupons were not the "produce" of the appellant's property, and that

[1] *(1921) 8 Tax Cases 178.*

"produce" in the context meant natural produce, such as fruit, leaves, latex, &c. This contention raises a question of some difficulty, and that difficulty arises from the fact that the *quotaisation* of tea and rubber has created an artificial state of things, which could hardly have been in contemplation when the Income Tax Ordinance was enacted. In consequence, the normal modes of assessment and the phraseology of some of the provisions of that Ordinance seem somewhat inappropriate in a case like this.

But, as I have indicated in the preliminary observations I made, if attention is paid to the substance and not only to words and to the mere form of things, it seems to me that under the scheme of, and in the conditions created by, the Tea and the Rubber Control Ordinances, these coupons may fairly be described at least as the equivalents of the produce of property. Assuming, however, but not conceding, that this line of reasoning is fallacious, these coupons fall to be treated as the reward of labour or effort for in order to obtain these tea and rubber landowners have maintained, or had at some relevant point of time to maintain, their lands in a certain condition in conformity with the provisions of the Ordinances and the rules made under them, and this maintenance involves or involved labour and effort however small or meagre.

Examined in this way, the amount in question appears to me to be "profits and income" derived from a business, namely, an agricultural undertaking, and assessable to income tax under section 6 (1) (*a*) of the Income Tax Ordinance.

If, however, this view is incorrect and the amount is not assessable under that sub-section, I am clearly of opinion that it is not a receipt which escapes altogether from the Ordinance. I find it impossible to resist the conclusion that this is a taxable receipt for, as very pertinently observed by the Board, "if the appellant's contention is accepted, the owner of a 500-acre estate may get it registered, refrain from harvesting its produce, receive coupons, derive large sums of money thereby, and escape taxation altogether in respect of the money he receives in connection with his owning and maintaining an estate". I agree with the Board that if it is assumed that this amount does not fall within the scope of section 6 (1) (*a*), it is caught up by the "residuary" sub-section (1) (*h*), for this amount is not something casual or something in the nature of a windfall. It is something that will recur, or, at least, that can be made to recur as long as the Tea and the Rubber Control Ordinances continue in operation.

For these reasons, I am of opinion that this amount was rightly assessed to tax and I would confirm the assessment.

The appellant will pay the costs incurred by the Commissioner of Income Tax in this Court. He will, however, be credited in the course of taxation of costs with the sum of Rs. 50 paid by him under section 74 (1) of the Ordinance.

KEUNEMAN J.—I agree.

Appeal dismissed.