1959 *Present :* **Basnayake, C.J., and de Silva, J.**

R. M. FERNANDO, Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent

S. C. 2—Income Tax Case Stated BRA/247

Income tax—Ownership of several properties by assessee—Income from one of them wholly paid by assessee to his son—Assessee's liability in respect of that income—Case stated—Duties of Board of Review when stating a case—Income Tax Ordinance, ss. 73 (8), 74.

The assessee had the life interest in a coconut estate of which the owner, after the cessation of the life interest, was his son. Early in 1953 he instructed those in charge that his son would manage the estate and enjoy its produce from 1st April 1953. Although the son was paid all the income from the estate for the accounting year ending 31st March 1954, there was no real change in the management of the estate, which continued to be worked in the same way as before along with other estates of the assessee. On 23rd September 1955 the assessee executed a deed by which he conveyed his life interest to his son.

Held, that the assessee, and not his son, was assessable in respect of the income from the estate for the accounting year ending 31st March 1954.

Observations on the functions of the Board of Review when stating a case under section 74 (2) of the Income Tax Ordinance. The function of the Board is to set forth fully, with care and attention, the facts and the decision of the Board and not to formulate specific questions to be answered by the Supreme Court. When the Board is divided in its opinion, there is no provision for the expression of his opinion by a dissenting member.

CASE stated under section 74 of the Income Tax Ordinance.

H. W. Jayewardene, Q.C., with *C. P. Fernando*, for Assessee-Appellant.

V. Tennekoon, Senior Crown Counsel, with *L. B. T. Premaratne*, Crown Counsel, for Assessor-Respondent.

Cur. adv. vult.

September 30, 1959. BASNAYAKE, C.J.—

This is a case stated under section 74 of the Income Tax Ordinance for the opinion of this Court. The assessee died after the case was stated and his son, who is the executor of his last will, made an application that he be substituted for the deceased assessee or added as appellant. On 4th September 1959 we made order permitting the executor to appear by counsel at the hearing of the stated case.

The facts which appear from the stated case and the documents annexed thereto and made part and parcel thereof are as follows : The assessee had the life interest in a coconut estate called Meegahatenne Estate of which the owner after the cessation of the life interest was his son H. M. A. B. Fernando. Towards the end of 1952 the assessee decided to give the income from Meegahatenne Estate to his son. The assessee

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took him to the estate, which was managed by the assessee, early in 1953 and instructed those in charge that his son would manage the estate and enjoy its produce with effect from 1st April 1953. The estate continued to be worked in the same way as before along with other estates of the assessee. The produce was sold as before to the same buyers who made their payments to the assessee and the accounts were kept by the assessee in his books. He paid the bills for goods purchased on account of the estate. In the relevant year, from time to time he paid the profits to his son by cheque as well as by bank draft when his son went abroad.

The Board has found that there was on the facts before them no real change in the management of the estate although the assessee's son visited the estate. There is no evidence, nor is there any finding by the Board, as to the nature of the activities of the assessee's son in respect of the direction and control of the estate. It would appear from the proceedings before the Commissioner of Income Tax which are made a part of the case stated that the assessee's son was for a part of the relevant period in England.

The assessor assessed the profits from Meegahatenne at Rs. 19,516 for the accounting year ending 31st March 1954 and included them in the assessable income of the appellant for the year of assessment 1954-55.

The appellant appealed to the Commissioner of Income Tax against the assessment on the ground that he had in fact paid the income to his son and that it should be assessed on the son. The Commissioner held that the income of Meegahatenne Estate must be assessed on the assessee for the year of assessment 1954-55, the payments made by the assessee to his son being regarded as gifts or voluntary allowances made by the father to the son and as such not allowable as a deduction from the income of the father. On 23rd September 1955 the assessee executed a deed by which he conveyed his life interest to his son. The assessee has not been assessed in respect of the income received from Meegahatenne Estate after that date.

The only question that arises for decision on the facts appearing in the stated case is whether the profits from Meegahatenne Estate amounting to Rs. 19,516 for the accounting year ending 31st March 1954 have been correctly included in the assessable income of the assessee for the year of assessment 1954-55. There can be only one answer to that question and that is that the assessee was assessable in respect of that income. We accordingly confirm the assessment.

Before we part with this case we wish to make a few observations about the stated case itself. As an aid to the better appreciation of our observations the case stated is reproduced below :

"*Case Stated*

For the opinion of the Honourable the Supreme Court under the provisions of Section 74 of the Income Tax Ordinance Chap. 188 upon the application of R. M. Fernando.

Appellant.

The facts are as follows :—

1. The appellant assessee was the lawful owner of the usufruct over an estate called Meegahatenne the ownership of which was vested in the appellant's son H. M. A. E. Fernando. The Assessee was in possession of the estate at any rate till 31st March, 1953.

2. Towards the end of 1952 the appellant appears to have decided to give his son the income from the estate. He took the son to the estate early in 1953 and instructed the Superintendent and Visiting Agent that the son would manage and enjoy the estate as from 1st April 1953. Thereafter the son has managed the estate and enjoyed the income.

3. There was no real change in the management of the estate. The produce was sold as before and the accounts of the estate were in the appellant's books. The appellant made payments from time to time to his son and these payments were debited to an account opened for the son in the appellant's books. The net profits of the year were credited to this account.

4. The Assessor assessed the profits from Meegahatenne Estate at Rs. 19,516 for the accounting year ended 31.3.54 and included it in the assessable income of the appellant for the year of assessment 1954-55.

5. The appellant appealed to the Commissioner against the assessment on the ground that the appellant had in fact paid the income to his son and that it should be assessed on the son.

6. The Commissioner of Income Tax heard the appeal and gave his decision rejecting the appeal. The Determination and Reasons of the Commissioner are attached hereto as part of the case marked X1.

7. The appellant thereupon appealed to the Board of Review constituted under the Income Tax Ordinance on the following grounds :—

   (1) The decision of the Commissioner is erroneous in point of law having regard to the facts placed before him.

   (2) The Commissioner was wrong in holding that the provisions of section 52 (2) of the Income Tax Ordinance did not apply in this case.

   (3) It is submitted that by reason of the instructions given by the appellant in the presence of his son in regard to the management and enjoyment of the estate with effect from the 1st April 1953, the appellant divested himself of the right to receive the income of the estate, so as to confer a right on the son thereto.

(4) It is submitted that by reason of the aforesaid instructions, the appellant, in any event, constituted himself a trustee of the income for the benefit of his son, which income, he in fact paid to his son.

(5) The documents produced by the appellant clearly establish that the arrangement entered into between the appellant and his son was in fact given effect to. The arrangements should not therefore have been disregarded—On the production of two of the cheque counterfoils and two of the bank statements the position was accepted that the son received the entire income.

(6) The Commissioner was wrong in holding that the payments by the appellant to his son must be treated as gifts or voluntary allowances.

(7) The fact that the accounts of the estate Meegahatenne continued to be kept in the same set of books as before (separate sets of books being kept for each of the estates of the appellant) does not show that the income was not his son's income.

(8) The appellant did not receive this income and was therefore not liable to Tax in respect of it.

8. The Counsel for the appellant at the hearing of the appeal contended inter alia as follows :—

(*a*) That the assessee has divested himself of his right to enjoy the usufruct.

(*b*) That the oral disposal of the income was a valid transaction in law.

9. It was urged on behalf of the Assessor inter alia as follows :—

(*a*) That there was no alienation of the interest of the appellant and what was done was mere application of the appellant's income.

(*b*) That the promise for establishing any interest in land is of no force or avail unless it is evidenced by a notarial document.

10. The Board of Review by a majority decision dismissed the appeal of the appellant. A copy of the findings of the majority of the Board and of the dissenting member are attached hereto as part of the case marked X2 and X3.

11. Dissatisfied with the decision of the Board of Review, the appellant has by his letter dated 13th December 1956, marked X4, applied to the Board to have a case stated for the opinion of the Hon'ble the Supreme Court on the questions of law arising in the case and this case is stated accordingly.

12. The questions of law which arise in this appeal as stated by the appellant in his letter dated 13th December 1956 are as follows :—

(*a*) The decision of the Board of Review is contrary to law and the weight of the evidence led by the appellant before the Commissioner.

(*b*) Whether or not the agreement entered into between the appellant and his son H. M. A. B. Fernando was a valid contract under the Roman Dutch Law and as such was enforceable in a Court of Law by the said H. M. A. B. Fernando.

(*c*) Even if the arrangement referred to in para (*b*) is unenforceable by reason of its being contrary to the provisions of Ordinance No. 7 of 1840, is the Assessor entitled to disregard the said disposition without showing that the said disposition was artificial or fictitious or was not in fact given effect to.

(*d*) Whether the income or profit accruing from the said estate, which was in fact received and enjoyed by the said H. M. A. B. Fernando, was ' income ' or ' profit ' which was derived by the appellant or arose or accrued to the benefit of the appellant within the meaning of Section 11 (1) of the Income Tax Ordinance (Cap. 188).

(*e*) Whether or not the liability to be taxed depends on the actual receipt of income or profit and not merely on the existence of possible sources of income.

13. Documents A1 to A7 and R1 produced before the Commissioner and X1 to X4 are annexed as part of this case.

14. The amount of tax in dispute is Rs. 16,588·60.

1. Sgd. S. J. C. Schokman

2. ,, R. R. Selvadurai

3. ,, ...

Members of the Board of Review,
Income Tax.

Colombo 1, April 30, 1957 ."

The stated case does not in our view satisfy the requirements of section 74 (2) of the Income Tax Ordinance. That provision requires that the stated case shall set forth the facts, the decision of the Board, and the amount of tax in dispute where such amount exceeds five

thousand rupees. In the context of section 74 (2) the expression " set forth " means to state fully in the document which is entitled the " Case Stated " and delivered to the party requiring it.

What the Board has done in the instant case is to place before this Court all the material that was placed before the Board and the Commissioner and invite it to decide a number of questions contained in the application of the assessee.

No attempt has been made to set forth fully in the case stated the facts found by the Board. All the proceedings commencing with the proceedings before the Commissioner, with the documents that were produced before him, have been indiscriminately incorporated by reference and declared to be part and parcel of the stated case, and the task of ascertaining the facts from the documents annexed is left to us. The case stated has not been drafted with that care and attention that should be given to a case stated for the opinion of this Court. Paragraph 2 is inconsistent with paragraph 3. In the former it is stated that " thereafter the son has managed the estate and enjoyed the income ." In the latter it is stated " there was no real change in the management of the estate. The produce was sold as before and the accounts of the estate were in the appellant's books. The appellant made payments from time to time to his son and these payments were debited to an account opened for the son in the appellant's books. The net profits of the year were credited to this account ."

The function of the Board under the statute is to state as fully as can be done in the document entitled " Case Stated " in serially numbered paragraphs in ordered sequence the facts on which arise the questions of law this Court has to decide. It is wrong to submit to this Court a whole bundle of documents, as has been done in this case, and expect it to wade through them and ascertain the facts which have found acceptance with the Board. The present practice of indiscriminately incorporating by reference every document that has been placed before the Board should be discontinued. There should be incorporated in the stated case all the relevant facts contained in each material document quoting verbatim extracts only when it is necessary to do so. In a case where the question arising on the case is the interpretation of a document the document itself should be a part of the case. The Board must take responsibility for the statements in the case and statements such as those contained in paragraph 12 are open to serious objection. It is not for the appellant to state the questions of law arising on a case stated. Apart from that the course adopted by the Board in repeating those questions without discrimination shows that the Board did not exert itself even to consider whether they were such as may be appropriately reproduced in the case stated. That the decision of the Board of Review is contrary to law and the weight of evidence led by the appellant before the Commissioner is not a question of law arising on the case stated for the decision of this Court and we are surprised that such a statement should have found a place in it.

The Board should also not state abstract questions of law for the opinion of this Court. For instance question (*b*) in paragraph 12, whether or not the agreement entered into between the appellant and his son

H. M. A. B. Fernando was a valid contract under the Roman Dutch Law and as such was enforceable in a Court of Law by the said H. M. A. B. Fernando is of academic interest only.

The Board should also not state hypothetical questions for the opinion of this Court. For example question (*c*) in paragraph 12 which reads " Even if the arrangement referred to in para (*b*) is unenforceable by reason of its being contrary to the provisions of Ordinance No. 7 of 1840, is the Assessor entitled to disregard the said disposition without showing that the said disposition was artificial or fictitious or was not in fact given effect to " should not have been stated.

The statute does not require the Board to formulate in catechistic form the questions which this Court has to decide. Sub-section (5) of section 74 requires the Court to hear and determine any questions of law arising on the stated case and not any question or questions formulated by the Board. The function of the Board is to set forth the facts and the decision of the Board and not to formulate as it has done in this case specific questions to be answered by this Court. The present practice is likely to result in a party being stated out of Court.

In the instant case the Board was divided and the opinion of the majority was that the assessee had been rightly assessed. The dissenting member also expressed his opinion in writing. There is no provision for the expression of his opinion by a dissenting member. There can be only one opinion remitted with the case under section 73 (8) to the Commissioner and that is the opinion of the majority where there is a division of opinion. In this instance even the dissenting opinion is incorporated as a part of the case stated, for what purpose it is not clear.

This is not the first time that a stated case of this nature has come up before this Court and we have thought it necessary to point out the defects in this case in order that care will be shown in the statement of a case for the opinion of this Court and a document such as has been submitted in this case will not be transmitted to it hereafter.

The responsibility for stating a case is vested by the statute in the Board of Review and although the statute provides for the appointment of a clerk and a legal adviser to the Board it cannot delegate its functions to either of them. Though in the performance of its statutory duty it may make use of its ministerial officers the ultimate responsibility for the due and proper performance of its duty rests with the Board and the Board alone. If it is the practice to leave the preparation of the case entirely to one of its ministerial officers and for the Board merely to sign the case as stated by such officer that practice is not warranted by law and must cease forthwith.

The assessee will pay the costs of the hearing of the case stated.

DE SILVA, J.—I agree.

Appeal dismissed.