1944 *Present:* **Moseley S.P.J. and Wijeyewardene J.**

DIAS, Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent.

No. 6 (Inty.) Income Tax.

Income Tax—Purchase of estates by planter—Within the year of assessment—Commence to carry on business—Income Tax Ordinance (Cap. 188), s. 11 (3).

Where a planter who owns estates buys other estates within the year of assessment, he commences several agricultural undertakings in respect of those estates and each of the estates acquired involved the commencement of the carrying on of a business within the meaning of section 11 (3) of the Income Tax Ordinance.

CASE stated to the Supreme Court by the Board of Review of the Income Tax Ordinance. The facts appear from the argument.

H. V. Perera, K.C. (with him *S. J. V. Chelvanayagam* and *H. W. Jayawardene*), for the assessee, appellant.—In 1940 the assessee owned certain tea and rubber properties. Subsequently he acquired certain other tea and rubber properties. The question is whether, whenever he bought a new property, he "commenced to carry on a business" within the meaning of section 11 (3) of the Income Tax Ordinance (Cap. 188). "Business" is defined in section 2. Section 11 (3) has been interpreted in *Commissioner of Income Tax v. Rodger* [1] and *Rowan v. Commissioner of Income Tax* [2] with reference to the words "employment" and "profession" respectively. Those two decisions are applicable, by way of analogy, as regards the meaning to be given to the word "business" in that section. What is contemplated by "business" is the type of business or the way in which a man employs himself as distinct from something specific and analogous to an office. See also *Davies v. Braithwaite*[3]. The acquisition of a new tea estate by a man whose business is already that of producing tea cannot be regarded as the commencement of a new business. The word "business" in section 11 (3) of the Income Tax Ordinance cannot be interpreted in the manner in which one would interpret section 19 (1) of the Excess Profits Duty Ordinance, No. 38 of 1941. The different estates under consideration in the present case are merely assets or units of the same "agricultural undertaking".

H. H. Basnayake, C.C., for the Commissioner of Income Tax.—The appellant was admittedly carrying on the business of an agricultural undertaking. Cultivation of land for the purpose of selling the produce is a business—*Back v. Daniels* [4]. The word "business" has a wide meaning, and whether a man is carrying on one business or separate businesses is a question of fact—*Commissioner of Income Tax v. Govindasami Naidu* [5]; *Commissioners of Inland Revenue v. The Marine Steam Turbine Co., Ltd.*[6]; *Commissioners of Inland Revenue v. The Korean*

[1] *(1933) 35 N. L. R. 169.*
[2] *(1939) 40 N. L. R. 224.*
[3] *L. R. (1931) 2 K. B. 628.*
[4] *(1924) 9 T. C. 183 at 203.*
[5] *(1922) 1 Indian T. C. 174 at 176.*
[6] *(1919) 12 T. C. 174 at 179.*

Syndicate, Ltd.[1]. The commencement of a business can be distinguished from an extension of it—*Fullwood Foundry Co., Ltd. v. Commissioners of Land Revenue* [2].

Section 11 (3) of Cap. 188 is not controlled by the decisions in *Rodger's* case (*supra*) and *Rowan's* case (*supra*) because that section was subsequently amended by section 5 of Ordinance No. 25 of 1939. Certain English cases are of assistance in the present case—*Fullwood Foundry Co., Ltd. v. Commissioners of Land Revenue*[3]; *Gloucester Railway Carriage and Wagon Co., Ltd. v. Commissioners of Inland Revenue* [4]; *Farrel v. Sunderland Steamship Co., Ltd.*[5]; *H. & G. Kinemas, Ltd. v. Cook* [6]; *Scales v. George Thomson & Co., Ltd.*[7]; *Birt, Potter & Hughes, Ltd. v. Commissioners of Inland Revenue* [8]. The test is whether there is any interdependence or unity embracing two or more businesses, and this is a question of fact.

The proviso of section 13 (3) of the Income Tax Ordinance indicates that a person can have more than one agricultural undertaking, so that all his agricultural undertakings do not necessarily fall under one head. See also sections 30 (2) and 31 (2).

H. V. Perera, K.C., in reply.—" Business " in section 11 (3) means kind of business and not a particular activity, and involves a pure question of law. That word is not caught up by the amendment introduced by section 5 of Ordinance No. 25 of 1939. The reasoning in the judgments in *Rodger's* case and *Rowan's* case is, therefore, applicable in the present case.

English cases are not applicable because, in Ceylon, there is no enactment similar to rule 11 (2) of Schedule D of the English Income Tax Act. In England rule 1 (2) of Schedule D has to be read with rule 11 (2).

Cur. adv. vult.

June 18, 1944. MOSELEY J.—

This is a case stated by the Board of Review, at the request of the assessee, for the opinion of this Court.

On April 1, 1940, and for some years previous thereto the assessee was—

(*a*) co-owner with others of Wallawe Estate of 385 acres in extent, planted in tea and rubber;
(*b*) sole owner of Kachchakaduwa Estate of 114 acres, planted in coconut;

In the year 1941 he acquired interests in other estates as follows:—

(*c*) on January 1, 1941, an undivided one-third share of Opata Group being 171 acres of rubber;
(*d*) on July 1, 1941, an undivided one-fourth share in Godadessa Estate of 300 acres, planted in tea and rubber; and
(*e*) on the same date, an undivided one-fifth share in Randola Estate of 300 acres of tea.

[1] *12 T. C. 181 at 196.*
[2] *(1924) 9 T. C. 101.*
[3] *Ibid.*
[4] *(1924) 12 T. C. 720 at 742.*
[5] *(1903) 4 T. C. 605.*
[6] *(1933) 18 T. C. 116.*
[7] *(1927) 13 T. C. 83 at 89.*
[8] *(1926) 12 T. C. 976 at 994.*

In consequence of the three latest acquisitions he was assessed for the years of assessment 1940-41, 1941-42, and 1942-43 on the basis that, at the respective dates of acquisition, he had " commenced to carry on . . . . a . . . . business " within the meaning of sections 11 (3) and (4) of the Income Tax Ordinance (Cap. 188).

The assessee was dissatisfied with this basis of assessment and appealed to the Commissioner of Income Tax who confirmed the assessment, which was in due course confirmed by the Board of Review. Hence this appeal by way of case stated.

The relevant sub-sections of section 11 of Chapter 188 are as follows :—

" (3) Where on a day within a year of assessment any person whether resident or non-resident commences to carry on or exercise a trade, business, profession, vocation, or employment in Ceylon, or, being a resident person, elsewhere, any profits arising therefrom for the period from such day to the end of the year of assessment shall be statutory income of such person for such year of assessment.

(4) Where on a day within the year preceding a year of assessment any person whether resident or non-resident has commenced to carry on or exercise a trade, business, profession, vocation, or employment in Ceylon, or, being a resident person, elsewhere, his statutory income therefrom for that year of assessment shall be the amount of the profits for one year from such day."

The decision of this case depends upon the interpretation to be given to the word " business ". Does it mean business in general, or a particular business ? Counsel for the appellant relied upon two decisions of this Court to support his contention that the meaning to be applied is " business in general ". If his contention were to be accepted there would be no commencement of carrying on a new business but merely an expansion of a business already being carried on by the assessee.

The cases upon which he relies do not touch the word " business " but he sought to apply to that term the principles laid down by this Court in regard to the term " employment " where the two words appear in the same context in the section under consideration. In *Commissioner of Income Tax v. Rodger* [1] it was held that where a person goes over to a new employer within a year preceding the year of assessment, but continues in the same form of employment, he does not "commence to carry on an employment " within the meaning of sub-section (4). Again, in *Rowan v. Commissioner of Income Tax* [2], the assessee, who had been employed by a firm of proctors and received, by way of remuneration, a salary and percentage of profits, was admitted as a partner of the firm and was thereupon to get a share of the profits only. It was held that, on his admission as a partner, there was no cessation of an employment within the meaning of section 11 (6) and no commencement of the exercise of a profession as contemplated by sub-section (3).

It emerged, somewhat late in the course of the argument, that section 11 of Chapter 188 has been amended by section 5 of Ordinance No. 25 of

[1] *(1933) 35 N. L. R. 169.*

[2] *(1939) 40 N. L. R. 224.*

1939, in such a way as to nullify the effect of the decisions in *Rowan v. Commissioner of Income Tax* (*supra*) and *Commissioner of Income Tax v. Rodger* (*supra*). Counsel for the appellant sought to turn the fact of amendment to the advantage of the latter, by submitting that the amendment, since it does no effect the question of " business ", leaves it open to us to interpret that term, by analogy, in the way in which this Court had prior to the amendment, dealt with the term " employment ". But does that necessarily follow ? It seems to me that each of the expressions " trade ", " business ", " profession ", " vocation ", and " employment " must receive attention individually, inasmuch as it must be conceded that some may have wider meaning than others. The word under discussion, viz., " business " was described by Rowlatt J., in *Commissioners of Inland Revenue v. The Korean Syndicate, Ltd.*[1] as a very wide word. " It may " he said " mean business for the acquisition of gain . . . . . or it may mean merely an occupation or a function." We are therefore relieved of any obligation to follow the reasoning in those cases in seeking an interpretation of the term " business ".

In these circumstances one may look for guidance to the English decisions on the somewhat analogous provisions of the Income Tax Acts.

The word " trade " in rule 1 (2) of the rules applicable to Cases I and II of Schedule D of the Income Tax Acts has been interpreted to mean a specific trade and not a kind of trade. Counsel for the appellant submitted that " trade " had been given that interpretation because rule 1 (2) was read in the light of rule 2 (2) of the same rules which made it quite clear that " trade " in the former rule meant a specific trade. I think we may with advantage adopt a similar method of interpretation.

Section 2 of Chapter 188 defines " business " as including " agricultural undertaking ".

The question, therefore, in the present case is whether the assessee commenced several agricultural undertakings at different times or he commenced his agricultural undertakings when he started life as a planter and his activities in respect of the various estates " are nothing but incidents in the conduct " of his agricultural career. The question may be put differently thus:—Had the appellant several agricultural undertakings or merely an agricultural undertaking which involved him in activities in respect of several estates at various times ?

Now Chapter IV deals with the ascertainment of statutory income; Chapter V, the ascertainment of assessable income; and Chapter VI, the ascertainment of taxable income. These subjects are so clearly connected that they could have been dealt with under one chapter. I think that we may turn to the proviso of section 13 (3) occurring in Chapter V. for assistance to interpret section 11 (3) in Chaper IV. The proviso to section 13 (3) reads—

> Provided that where any person carries on more than one agricultural undertaking, a loss incurred in any such undertaking shall be deducted in the first instance from the statutory income arising from his other agricultural undertakings.

[1] *12 T. C. 181 at 196.*

This proviso would have been superfluous if the various holdings of an agriculturist would *always* amount to an " agricultural undertaking ". I hold, therefore, that section 11 (3) contemplates the possibility of a planter who buys several estates commencing several agricultural undertakings in respect of those estates.

This was the opinion held by the Assessor, and in turn by the Commissioner and the Board of Review. Since I am in agreement with that view on a matter which is the only point of law which arises in the case stated there is nothing more to be said. In pursuance of that view the Assessor proceeded to hold that each of the interests acquired by the assessee under the designations (*c*) (*d*) and (*e*) above involved the commencement of the carrying on of a business. This is a question of fact. If authority be needed for the proposition it may be found in *The Gloucester Railway Carriage and Wagon Co., Ltd. v. The Commissioners of Inland Revenue* [1]. That being so, it is not a matter which concerns this Court. We are bound by the finding of the Board of Review as long as it appears to us that there is evidence to support it. Of that there is an abundance, since it was admitted that each of the five estates owned, either solely or with others, by the assessee has its own staff, keeps its own check roll and accounts, that the produce is gathered, prepared for the market and sold separately, and that the profits are shown separately in income tax returns. It is unnecessary, in the circumstances, to refer to the numerous English decisions cited by Counsel for the Commissioner in which a similar view has been taken in very similar circumstances.

The appeal is dismissed with costs.

WIJEYEWARDENE J.—I agree.

Appeal dismissed.