1962 *Present :* **Herat, J., and Abeyesundere, J.**

COMMISSIONER OF INLAND REVENUE, Appellant, *and* A. H. V. MOHAMED, Respondent

S. C. 4/61 (Income Tax)—B. R. A.294/1

Income tax—Business—Profits or income of the year 1957—Incapacity of proprietor to claim deduction in respect of entertainment expenses—Income Tax Ordinance, as amended by Act No. 13 of 1959, ss. 5, 12 (ab).

The effect of paragraph (ab) of section 12 of the Income Tax Ordinance, as amended by Act No. 13 of 1959, is that, for the purpose of ascertaining the profits or income of the year 1957 from a person's business, no deduction shall be allowed in respect of entertainment expenses incurred in connection with that business.

CASE stated under the Income Tax Ordinance.

A. C. Alles, Deputy Solicitor-General, with *E. D. Wikramanayake*, Crown Counsel, for the Commissioner of Inland Revenue.

S. Nadesan, Q.C., with *Desmond Fernando*, for the assessee.

Cur. adv. vult.

June 6, 1962. ABEYESUNDERE, J.—

Case No. S.C. 4/61 (Income Tax) is a case stated by the Board of Review at the instance of the Commissioner of Inland Revenue under section 74 (now section 76) of the Income Tax Ordinance for the opinion of the Supreme Court on the question of law whether a deduction in respect of entertainment expenses incurred in the year 1957 in connection with the business of the assessee in the case under reference (hereinafter referred to as " the assessee ") shall or shall not be allowed for the year of assessment commencing on April 1, 1958, for the purpose of ascertaining the profits or income from that business.

Paragraph (ab) of section 10 (now section 12) of the Income Tax Ordinance, as amended by Act No. 13 of 1959, so far as those provisions thereof that are relevant to the case under reference are concerned, provides that, in respect of entertainment expenses incurred in connection with a person's business, no deduction shall be allowed for the year of assessment commencing on April 1, 1958, in ascertaining the profits or income from that business. The deduction that is disallowed is in regard to profits or income ascertained for the aforesaid year of assessment. It is therefore necessary, for the purpose of expressing

an opinion on the question of law in the case under reference, to determine what are the profits or income from the business of the assessee that are required to be ascertained for the year of assessment commencing on April 1, 1956. According to section 5 of the Income Tax Ordinance, the tax to which a person is liable is charged for any year of assessment in respect of his profits and income of the year preceding that year of assessment except in particular cases where the tax is charged for a year of assessment in respect of the profits and income of that year. The case under reference is not one of these particular cases. Therefore the tax to which the assessee is liable as regards the profits or income from his business must be charged for the year of assessment commencing on April 1, 1958, in respect of the profits or income of the year 1957 from that business, the accounts of that business being made in respect of each year for the period January 1st to December 31st. Consequently the profits or income from the business of the assessee that are required to be ascertained for the year of assessment commencing on April 1, 1958, are the profits or income of the year 1957 from that business.

I am therefore of the opinion that the effect of paragraph (ab) of section 10 (now section 12) of the Income Tax Ordinance, as amended by Act No. 13 of 1959, is that, for the purpose of ascertaining the profits or income of the year 1957 from the assessee's business, no deduction shall be allowed in respect of entertainment expenses incurred in connection with that business. The case shall be remitted to the Board of Review with the opinion expressed by this Court in order that such Board may revise the assessment in respect of the assessee as such opinion may require.

HERAT, J.—I agree.

Case remitted to the Board of Review.