

1966 Present : H. N. G. Fernando, S.P.J., and Abeyesundere, J.

E. J. G. CASIE CHITTY and 4 others, Appellants, and
THE COMMISSIONER OF INLAND REVENUE, Respondent

S. C. 2/64—Income Tax Case Stated/BRA 327

*Income tax—Profits made from buying and selling estates—Assessability on basis of a
single “ trade ”—Income Tax Ordinance (Cap. 242), s. 73 (6).*

Where an assessee carries on a “ trade ” in the purchase and sale of estates, the profits made by him from the transactions relating to the purchase and sale of a particular estate and the transactions relating to the purchase and sale of other estates are the profits made from a single trade. In such a case, if, at the stage of the assessee’s appeal under section 73 (1) of the Income Tax Ordinance, the income from the purchase and sale of a particular estate is added for the first time to the income already assessed in respect of other estates, there is no necessity to decide whether section 73 (8) does or does not enable the increase of an assessment on the ground that income was derived from a source not contemplated in an assessment under appeal.

CASE stated under section 78 of the Income Tax Ordinance.

C. Ranganathan, Q.C., with *S. Ambalavanar*, for the executors-appellant.

R. S. Wanasundera, Crown Counsel, with *P. Naguleswaran*, Crown Counsel, for the respondent.

Cur. adv. vult.

May 8, 1966. H. N. G. FERNANDO, S.P.J.—

According to the case stated under Section 78 of the Income Tax Ordinance, the questions of law for the opinion of this Court are as follows :—

“(a) Whether the Commissioner of Inland Revenue or an Authorised Adjudicator has the power under Section 73 (8) of the Income Tax Ordinance to increase an assessment by adding the income from a source not included in the assessment made by the Assessor ;

(b) Whether the profits made by the late Mr. A. P. Casie Chitty from the transactions relating to the purchase and sale of North Matale Estate and the transactions relating to the purchase and sale of Craigingilt Estate, Benveula Estate, Beverley Estate and Ragala Bazaar are the profits made from a single trade."

In the aforesaid question (a) the reference to Section 73 (8) of the Income Tax Ordinance, hereinafter referred to as the Ordinance, appears to be erroneous and intended to refer to Section 73 (6) of the Ordinance which enables the Commissioner of Inland Revenue to increase an assessment on an appeal.

It is convenient to deal firstly with the question (b) set out in the case stated, and to refer to some of the facts which have given occasion for an answer to that question.

The Appellants in this case are the Executors of the Estate of one A. B. Casie Chitty. The deceased had made a return of income for the year of assessment 1949/50. After his death in November 1952 two additional assessments for Profits Tax and Income Tax were made within the time limit then applicable under Section 65 of the Income Tax Ordinance. In the second of these assessments the Assessor has stated that "the trade income of the late Mr. Casie Chitty had been recomputed". The Appellants then appealed against these additional assessments.

Under Section 73 (2) of the Ordinance the Commissioner referred the Appeals to the Assessor for further inquiries. During this inquiry the appellants agreed that the deceased had carried on a "trade" in the purchase and sale of four estates, namely, Craigingilt, Benveula, Beverley and Ragala Bazaar, and that profits therefrom had been Rs. 62,184. During this inquiry also information received by the Assessor led him to conclude that another series of transactions relating to the sale of North Matale Estate had also been effected by the deceased, but the appellants did not agree with the Assessor's view of the matter. The Appeal, which after this stage only related to the dispute about the North Matale transactions, was then referred by the Commissioner to an authorised adjudicator. The adjudicator then held that the deceased had made profits from the transactions of the sale of North Matale Estate and that the income derived by the deceased from these transactions was Rs. 149,306.

It is common ground that at the stage when the additional assessments were made the Assessor was not aware of the North Matale transactions which came to his notice only after the appellants had appealed against

the additional assessments. The main contention of the appellants before the Board of Review, which contention has necessitated an answer to the question (b) set out in the case stated, has been that the power given by Section 73 (6) of the Ordinance for an assessment to be increased on appeal can be exercised only in respect of sources of income taken into account in the assessments under appeal. On this ground it has been urged that the transactions relating to North Matale Estate were not a source of income which were subject under the additional assessments under appeal and could not be the basis for an increase of those additional assessments.

It cannot now be disputed that the deceased did carry on a "trade" in the purchase and sale of estates : indeed this was conceded by the appellants in connection with the transactions concerning Craigingilt Benveula, Beverley and Ragala Bazaar. In regard to North Matale, the deceased did not in fact purchase the estate. But he had secured an option for the purchase of it by himself or by his nominees, and the finding of fact by the adjudicator was that although the transactions for the sale of the estate were not in his name the deceased had in fact, in pursuance of the option secured by him, made profits through the sale of that estate. The North Matale transaction therefore was in fact the fifth transaction (the other four being those relating to the other four estates) which the deceased had effected in the course of his "trade" in the purchase and sale of property. In carrying on such a trade there may be several transactions but each of those transactions is not a separate trade, just as each transaction of purchase and sale of groceries by a grocer is not a separate trade of the grocer. The profits from all the transactions relating to the five properties were profits from one trade, namely, the trade of purchase and/or sale of property. Accordingly I would answer the question (b) in the affirmative, namely, that the profits from the transactions relating to North Matale, Craigingilt, Benveula, Beverley and Ragala Bazaar are the profits made from a single trade.

Having regard to the opinion I have just expressed this is not a case in which the authorised adjudicator has in the course of an appeal increased an assessment by taking into account income or profits derived from a source which was not a subject contemplated in the assessment under appeal. The "trade" in the purchase and sale of property had been in fact contemplated in the assessments under appeal and it was common ground that the deceased had carried on that "trade".

Accordingly there is no necessity in this case to decide whether Section 73 (6) does or does not enable the increase of an assessment on the ground that income was derived from a source not contemplated in an assessment

under appeal. I do not propose therefore to consider the question (a) set out in the case stated although the Indian decisions referred to in the order of the Board of Review appear to lead to the conclusion that that question should receive an answer in the negative.

The appellants will pay to the Respondent a sum of Rs. 525 as costs.

ABEYESUNDERE, J.—I agree.

Appeal dismissed.
