1939 *Present :* **Moseley A.C.J. and Soertsz S.P.J.**

CHELVANAYAGAM *v.* COMMISSIONER OF INCOME TAX.

S. C. 148 (Inty.)

Income tax—Advocate—Purchase of Law Reports—Deduction of cost not allowed—Ordinance No. 2 of 1932, s. 9 (1) (a).

The cost of a set of Law Reports purchased by an Advocate is not a permissible deduction in assessing his income from the profession.

THE assessee-appellant, who is an Advocate, claimed that a sum of Rs. 354 expended by him in the purchase of a number of volumes of the Indian Appeal Law Reports should be deducted for the purpose of arriving at his taxable income. The claim was disallowed by the Commissioner and the Board of Review, and a case was stated for the opinion of the Supreme Court under section 74 of the Income Tax Ordinance.

H. V. Perera, K.C. (with him *N. Nadarajah, A. Muttukumaru,* and *C. C. Rasa Ratnam*), for the assessee-appellant.—The practice is to deduct from the gross income the value of Enactments, current local reports, and of text books in the nature of replacements. A lawyer is handicapped if he does not possess the Indian reports. The Income Tax Department has drawn an arbitrary distinction. A book used for the purpose of acquiring general knowledge, like one on jurisprudence, is different from one necessary for the presentment of a case in Court. No person reads these reports unless he is studying a case.

[SOERTSZ S.P.J.—Is there any case similar to this one decided under the English Act?]

There is the case of a medical man. There it was held that if the books were read to the patients, the value could be deducted, but not where the books were read to acquire a knowledge of the subject.

Section 10 of the Ordinance is rather difficult to apply. If books are bought for the purpose of acquiring knowledge, then it is a capital expense, but it is not so, if they are bought for the purpose of having them at hand.

[SOERTSZ S.P.J.—Suppose a man buys all the reports?]

Each case depends on its merits. The Commissioner must find whether it is necessary for his practice. The position of a junior lawyer is different from that of a senior. Expenditure incurred in preparing oneself for work is not allowable.

The word "capital" has been explained in several cases as the source of getting in the income Money spent in acquiring a business is also capital expense. See *Commissioner for Inland Revenue v. George Forest Timber Co., Ltd.*[1], and the *Dictionary of Income Tax and Surtax* by *Snelling*[2]. Books can never be included as plant as decided in *Daphne v. Shaw*[3]; *Simpson v. Tate*[4] and *Sir Hari S. Gour's case*[5] were also cited.

[1] *(1924) A. D. 516.*
[2] *1931 ed., p. 240.*
[3] *(1926) 11 Tax cases.*
[4] *(1925) 2 K. B. 214.*
[5] *3 Rep. of I. T. C. 333.*

S. J. C. Schokman, C.C., for the Commissioner of Income Tax.—The point of law must be based on the facts stated. The point discussed before the Board of Review was that the brain was the capital and the books were mere implements. As long as the expense is of a capital nature, it is immaterial whether it is spent in getting the business.

Simpson v. Tate [1] was decided under Schedule E to the Income Tax Act which deals with employments, whilst Schedule D deals with professions. Whether a professional man is in employment or in private practice, no deductions are allowed for obtaining literature because the expense is of the nature of capital expenditure. See *5 S. A. Tax Cases 256; 6 Tax Cases 671, at 677;* and *Ounsworth v. Vickers, Ltd.*[2]. The books are there even after his retirement. They would form part of his estate. Further it is difficult to say whether the Advocate is just starting to get a practice or not.

H. V. Perera, in reply.—The South African case was decided by a tribunal corresponding to the Board of Review in Ceylon. Hence that case is not binding. Further the reasoning in that case is not convincing and it is contrary to the practice of deducting money spent on current reports. In *Ounsworth v. Vickers, Ltd.* (*supra*), the dredging of the harbour was not only for the use of the battleships but for the use of other ships as well. Hence this case would not apply.

Cur. adv. vult.

March 30, 1939. MOSELEY A.C.J.—

The appellant, an Advocate of the Supreme Court, claimed that a sum of Rs. 354 expended by him in the purchase of a number of volumes of the Indian Appeal Law Reports should be deducted for the purpose of arriving at his taxable income for Income Tax purposes. His claim was disallowed by the Commissioner of Income Tax and by the Board of Review to whom he appealed. The question has now come before this Court by way of case stated.

The point is whether the expenditure referred to above is an "outgoing and expense" incurred by the appellant in the production of his income.

It is apparently the practice of the Commissioner to allow deductions in respect of expenditure on the purchase of current reports, but not, as in the present case, in regard to other works of reference. Snelling in the *Dictionary of Income Tax and Surtax Practice (1931 ed.), at page 240,* says, ". . . . a lawyer may deduct sums paid for current reports, &c. A clergyman or minister of religion, however, may not be allowed the cost of purchasing books required for purposes of study. This rule would apply to lawyers and business men in connection with any books which may be said to equip them for their business rather than to be used in the carrying on of their business."

In *Daphne v. Shaw* [3] the appellant, a Solicitor, claimed a deduction in respect of wear and tear and obsolescence of books forming part of his law library. Rowlatt J. refused to believe that the books which a lawyer consults on his shelves could be included in the expression "plant and machinery", and upheld the finding of the Commissioners disallowing the deduction.

[1] *(1925) 2 K. B. 214.* [2] *(1916) 3 K.B. 267.*

[3] *11 Reports of Tax Cases 256.*

In *Simpson v. Tate*[1], a medical officer of health sought to deduct from his taxable income money paid as subscriptions to professional and scientific societies. Rowlatt J. in finding against the assessee, said, "In my view the principle is that the holder of a public office is not entitled under this rule to deduct any expenses which he incurs for the purpose of keeping himself fit for performing the duties of the office, such as subscriptions to professional societies, the cost of professional literature and other outgoings of that sort. If deductions of that kind were allowed in that case . . . . , there would be no end to it."

In my view the principle expounded by Rowlatt J. may well be applied to the case of a deduction sought to be made in similar circumstances under the local enactment.

The appeal therefore fails. In view of the fact that the appellant will lose the sum of Rs. 50 which he has deposited in accordance with section 74 of the Ordinance, I do not propose to make any order as to costs.

SOERTSZ S.P.J.—I agree.

Appeal dismissed.