

1934

*Present : Dalton and Driberg JJ.*

## RAJAPAKSE v. COMMISSIONER OF INCOME TAX.

S. C. (50)—*Income Tax.*

*Income Tax—Deduction for expenses incurred—Advocate practising in Supreme Court—Claim for travelling from residence to the Courts—Meaning of the term “place of business”—Ordinance No. 2 of 1932, s. 10 (a).*

The expenses incurred by an advocate in travelling, from premises in which he resides and has his chambers, to the Supreme Court are not costs of travelling between his residence and place of business within the meaning of section 10 (a) of the Income Tax Ordinance.

**T**HIS was a case stated for the opinion of the Supreme Court under the provisions of section 74 of the Income Tax Ordinance, 1932.

The appellant is an advocate residing at Rosmead place, Colombo, and practising before the Supreme Court at Hulftsdorp. In returning the profits from his profession he claimed certain deductions including rent of chambers in his house and the cost of travelling to and from chambers to the Supreme Court, sitting in its appellate capacity at Hulftsdorp. He was allowed a deduction in respect of his chambers, but was refused the deduction for the cost of travelling between his chambers and the Supreme Court. The Board of Review held that the deduction claimed was the cost of travelling between residence and place of business within the meaning of section 10 (a) of the Income Tax Ordinance and could not be allowed.

**H. V. Perera** (with him **K. S. Aiyer** and **M. M. I. Kariapper**), for assessee, appellant.—It is submitted that an advocate's chambers are his place of business. A place of business connotes a fixed place where a fee is charged for the commencement of a duty. A great part of an advocate's work is done in chambers—consultations, preparation of cases, acceptance of fees, clerical work through his clerk.

If one considers the case of a proctor, it is hardly possible to say that a proctor comes to the Courts as his place of business. A proctor cannot appear in some Courts, e.g., Appeal Court. A chamber lawyer may come to the Courts at Hulftsdorp merely to consult authorities which he cannot find at home. A place of business is rather a place where one enters into a contract than a place where one seeks to execute or complete one's business.

Secondly, the profession of an advocate is neither a business nor an employment under section 10 (a). In a very broad sense the word business may be applied to a profession. A business implies something commercial. Business implies advertising, a professional man cannot do that. Employment presupposes an employer. In an employment wages are important. An advocate cannot offer his services to the public at large. His work is really honorary, for he cannot sue for fees. See *Commissioner of Inland Revenue v. Maxe*<sup>1</sup> for the difference between business and profession.

**J. E. M. Obeyesekere**, Acting Deputy S.-G. (with him **M. F. S. Pulle**, C.C.), for the Income Tax Commissioner.—The finding of the Commissioner and of the Board of Review that the place where the appellant argues his cases is one of his places of business is a question of fact which should not be disturbed.

[DRIEBERG J.—If it is a finding of fact, why is this case stated ?]

It is a question of law, whether apart from the appellant's connection with them, the Courts at Hulftsdorp are a place of business. (*Ushers Webster Brewery Ltd. v. Bruce*<sup>2</sup>. An advocate may have more than one place of business. In the ordinary course the appellant comes to Hulftsdorp and argues his cases. An advocate interviews proctors, accepts retainers and does other legal work at Hulftsdorp. At stated times the appellant is available to his clients and proctors at Hulftsdorp. A person may have more than one place of business. The appellant's residence does not cease to be a residence merely because he uses one room in that residence as a place of business. When the appellant travels between Rosmead place, where he has his residence, and Hulftsdorp, he travels between his residence and a place of business, within the meaning of section 10 (a).

Business is given a wide meaning in English Income Tax practice. It does not mean a trade only (*Smeaton v. Attorney-General*<sup>3</sup>).

Counsel also cited *Commissioner of Inland Revenue v. Korean Syndicate*<sup>4</sup>, and *Smith v. Anderson*<sup>5</sup>.

The word business has a wide meaning. We hear of the business of the Courts. An advocate's business is in the Courts.

<sup>1</sup> (1919) 1 K. B. 647.

<sup>2</sup> (1915) A. C. 433.

<sup>3</sup> 12 Tax Cases 166. (1920) 1 Ch. 85.

<sup>4</sup> (1921) 3 K. B. 258.

<sup>5</sup> (1980) 15 Ch. D. 247, 258.

*H. V. Perera*, in reply.—If Courts are a place of business, a *fortiori* the chambers. The work of an advocate may be looked at from two points of view (1) work he has to do from day to day in respect of a number of cases he has in hand, (2) particular acts of employment.

From the first point of view he begins his work earlier in the day in the chambers and not in the Courts and not at the time work commences in the Courts. An advocate begins his work for the day in his chambers. From the second point of view the work done in a single act of employment is not only the argument but also the preparation, which is done in chambers. An advocate's duties in respect of a piece of work commences in his chambers. When he comes to the Courts he is travelling to a place where a part of his duties have to be done. An advocate can practise all over Ceylon, he need not confine himself to one place.

*Cur. adv. vult.*

November 28, 1934. DALTON J.—

This is a case stated for the opinion of this Court under the provisions of section 74 of the Income Tax Ordinance, 1932.

The following facts are established or admitted. The appellant is an advocate residing at Rosmead place, Colombo. He normally attends the Supreme Court in Hulftsdorp, Colombo, every day when it is sitting for the argument of appeals listed for hearing before that Court. He has chambers in his house, in which he interviews proctors and clients, writes opinions, accepts retainers and prepares his cases. He occasionally appears in the original Courts outside Colombo, on retainers. The travelling expenses incurred in going to such outstation Courts have been allowed.

In returning the profits from his profession he claimed certain deductions including rent of the chambers in his house and the cost of travelling to and from such chambers to the Supreme Court sitting in its Appellate Jurisdiction at Hulftsdorp, amounting to Rs. 640 for the Income Tax year ending March 31, 1933. He was allowed a deduction in respect of his chambers, but was refused the deduction for the cost of travelling from his chambers to the Supreme Court at Hulftsdorp. The Board of Review held that the deduction claimed was the cost of travelling between residence and place of business or employment, within the terms of section 10 (a) of the Ordinance, and therefore the deduction claimed could not be allowed.

Two questions arise for decision, the first and principal one being whether the Board was correct in holding that the Supreme Court, Hulftsdorp, was the appellant's place of business or employment, within the meaning of section 10 (a). I regret I am unable to agree with their conclusion on this point.

I am satisfied that it was intended that the sub-section (a) should be read as widely as possible, and for that reason I am unable to agree with Mr. Perera's contention that the profession of an advocate cannot be brought within the words used there. I have no doubt that the section was intended to, and does apply to professional men such as the appellant, just as to others carrying on their trade, business or employment generally. I agree with him, however, when he urges that the Appellate Courts at Hulftsdorp cannot be said to be the appellant's place of business or

employment, or even a place of business of the appellant, within the meaning of the section, although the Courts are undoubtedly, of course, places to which the appellant resorts in the course of carrying on his profession.

The term "place of business or employment", as used in this sub-section, imports, in my opinion, first of all some idea of fixity of place, so far as the business or employment is concerned, a place where a man would normally be found regularly or perhaps at stated intervals, for the purpose of carrying on his work or profession generally. Which of the Appeal Courts is it suggested is the place of business or employment in this case? Perhaps that Court in which the appellant's cases may be heard on any particular day. That Court may vary from day to day, and on some days it may happen that the appellant has no cases down for hearing. In the latter case he would presumably not attend the Courts at all, but his work would still be going on in his chambers. Can it then be said that his place of business is the Appellate Courts as a whole, whether they are sitting or not, and whether he has any cases down for argument or not? That, I think, is the contention put forward that has been upheld by the Board. Wide though the words of the sub-section undoubtedly are, I feel quite unable to give it any such vague and indefinite construction as we are asked to do in this case. The words, to my mind, import also a conception of some personal right to the place as a place of business or employment, or a duty to be there, based on something very much stronger than an advocate's right of audience in the Courts and his duty to the Court and to his clients. Advocacy is no doubt an important part of the appellant's work, but there is much of his work that he does not do in the Courts at all. The preparation of his cases, the writing of opinions, acceptance of retainers, conferences, and consultations normally take place in his chambers, as is admitted in the case stated by the Board, and not elsewhere. That is the place where inquiry would normally be made for him, where his clerk would be, and the place to which his work or business comes to him. So far as any of the work mentioned is done at Hulftsdorp, it would, I presume, be done at the Law Library, but in any case probably to a very small extent.

Another difficulty that arises from the argument put forward by Mr. Obeyesekere in support of the Board's decision is as to the extent to which he would carry it. It is conceded of course that a man may have a place of business, but that there may be no business coming in, and nothing for him to do. In that event it was answered that he would have no income tax, but that is not so. A young advocate, looking for work, hoping for briefs, but possibly not very successful for some years, might have an income from other sources such as private property belonging to himself, and any deduction he claims would presumably be a deduction from the total income he receives. The argument put before us must, I think, extend to this, that the Courts in question are the place of business of every advocate practising there or holding himself out as practising there, whatever the extent of his work may be.

That all the Courts which the appellant attends are not a place of business or employment of the appellant, within the meaning of section 10 (a), has been recognized by the Board of Review, for they have allowed

a deduction under section 9 (1) of the Ordinance in respect of travelling expenses incurred by the appellant in going to Courts outside Colombo. I have some difficulty in understanding on what grounds that has been allowed, if the Courts which he attends are a place of business or employment, within the meaning of section 10 (a). I do not see that the fact that an advocate appears more frequently in one Court than in another can have any bearing upon the construction of section 10 (a).

I find practically no assistance on this question from any of the English authorities cited to us, for the provisions of the law we are asked to construe here differ from the equivalent provisions of the Income Tax law in England. I would add, however, that I should be very surprised to hear any barrister practising in London giving his place of business or employment, using that term as applicable to a professional man, as the Royal Courts of Justice in the Strand, however large or small the volume of his work there might be.

If the appellant's place of business is the Courts which he attends in the course of carrying on his profession, then it might well be said that the place of business of a medical practitioner, who carries on private practice, is the different houses of his patients which he visits in the course of his morning or evening round. Another instance in the case of the medical man would be when he attends patients in a nursing home, which does not belong to him, and at which he holds no appointment. If he fairly regularly attended patients of his at such a nursing home, whenever they were inmates there, could it possibly be said that such a nursing home was his place of business? In my opinion, the most that could be said, so far as the question arising here for decision is concerned, is that he visits these houses and the nursing home just as an advocate attends the Courts for the purpose of, and in the course of, carrying on his profession, and no more. Instances of the same kind arise in the case of other professions also.

For the above reasons I am unable to agree with the Board of Review in their decision that the deduction claimed by the appellant here was the cost of travelling between residence and place of business or employment, for the reason that the Supreme Court sitting in its Appellate Jurisdiction at Hulftsdorp is not a place of business or employment of the appellant, within the meaning of section 10 (a) of the Income Tax Ordinance, 1932. Whether or not these travelling expenses were incurred by the appellant in the production of his income, within the meaning of section 9 (1), is of course not a matter that arises for any decision on the case stated.

The further question argued before us as to whether the deduction claimed was for travelling from his residence or chambers, need not, in view of my conclusion above, be considered, although this, I think, would be mainly a question of fact.

I would therefore answer this question of law as above set out. In the event therefore the appellant succeeds in his appeal. It was agreed that there should be no order in respect of costs, whatever our decision be, except that the appellant should be entitled to a refund of the sum of Rs. 50 paid on the case being stated, if he be successful. He will therefore be entitled to be repaid that sum.

DRIEBERG J.—

This is a case stated under the provision of section 74 of the Income Tax Ordinance, No. 2 of 1932, by the Board of Review on the application of the assessee who had appealed to the Board from the decision of the Income Tax Commissioner. The assessee is an advocate residing in Colombo and practising mainly in the Appeal Court. He has his chambers in his house, and he claimed that in the assessment of his taxable income allowance should be made for the cost of his travelling from his chambers to the Supreme Court, which amounted to Rs. 640 a year. The Commissioner decided that this was the cost of travelling between his residence and place of business and that under section 10 (a) of the Ordinance no deduction could be made for it. The assessee appealed to the Board who upheld the decision of the Commissioner. He then asked, under section 74 (1), that the Board should state a case on a question of law for the opinion of this Court. A "case stated" should, I think, contain in addition to a statement of the facts the matter of law submitted for decision formulated as a question. This has not been done here, though the Board observed the requirements of section 74 (2) that the case stated should "set forth the facts and the decision of the Board".

I have referred to this for this reason, the only material before us is the case stated by the Board under section 74 (2). It is there stated that the assessee claimed that he was entitled to the deduction of Rs. 640 on the ground that they were expenses incurred in the production of his income and under section 9 (1) should be deducted in ascertaining his taxable income. The Commissioner decided that the claim was barred by section 10 (a) and assessed his taxable income at a certain amount; this was upheld by the Board. The members of the Board stated their decision as follows:—"We the members of the Board who heard the appeal upheld the decision of the Commissioner and the assessment was confirmed as we were of the opinion that the deduction claimed was the cost of travelling between residence and place of business or employment within the terms of section 10 (a)." Now if these expenses are barred by section 10 (a) there still remained the question expressly raised by the assessee that he was entitled to a deduction of them under section 9 (1). This aspect of the matter was not dealt with by the Board, but as the Board upheld the Commissioner's assessment, which was what the assessee appealed from, I must assume that the Board was of opinion that the expenses did not fall within section 9 (1).

This shows the necessity for the Board, when acting under section 74, to formulate expressly the questions of law for the decision of this Court.

We were told, however, that the only question for our decision was whether the assessee's claim fell within section 10 (a). In dealing with this, it will be necessary to refer to section 9 (1), but it will be understood that anything that I say is not to be considered as a ruling on the applicability of that provision to this case, for argument was not directed to it.

Chapter III. of the Ordinance consists of two sections, 9 and 10, and has the title "Ascertainment of Profits or Income". Section 9 (1) provides that, subject to the provisions of sub-section (2), there shall be deducted,

for the purpose of ascertaining the profits or income of any person from any source, all outgoings or expenses incurred by such person in the production thereof including the several causes of expenditure set out in sub-sections (a) to (g). Sub-section (2) of section 9 deals with certain exceptions concerned with the profits or income from land.

Section 10 (a) enacts that for the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of domestic or private expenses, including the cost of travelling between residence and place of business or employment.

The assessee says that in that part of his residence which he uses as his chambers he gives interviews to proctors and clients, deals with matters submitted for opinion and generally does all that work of an advocate unconnected with or not requiring appearance in a Court. I take it that he would ordinarily be engaged there until he left for the Courts and that on days on which the Courts do not sit he would spend a considerable part of his time there on that part of his work as an advocate which I have referred to. There is no provision in Colombo for chambers in the vicinity of the Courts, advocates are obliged to use a part of their residence for the purpose, and we were told that the income tax authorities recognize this and allow them for this reason a deduction from the rent they pay. In these circumstances, can it be said that in going to and returning from the Courts he travels between his residence and his place of business or employment? It was conceded that the Courts could not be regarded as the assessee's place of employment and I need only consider the question from the point of view whether they can be considered his place of business.

A part of Mr. H. V. Perera's argument was that the word "business" in itself excluded the occupation of an advocate, which is a profession and not a business. There is no doubt that used in that special sense it would have that effect. To speak of a person as engaged in business implies occupation in trade or commerce and not in a profession such as law or medicine. But the word has a wide range of meaning and can be used to mean generally the work that a man is engaged on, whether it be a trade or a profession. The Oxford Dictionary recognizes the use of the word in these different senses. It appears to me, however, that it was not intended to use the word "business" in section 10 (a) in a special sense, but that the words "business" or "employment" were intended to include all those activities of a person in the nature of a "trade, business, profession or vocation" which are a source of profit or income and chargeable with tax under section 6 (1). It will be noted that (a) and the other sub-sections of section 10 deal with matters which are not to be excluded in ascertaining the income derived from any source; the word "any" is important.

This however does not conclude the question before us, for we have to deal not with the word "business" alone but with the phrase "place of business" in relation to the circumstances of this case. Here again we are confronted with the uncertainty whether the phrase is used in a special sense, or in the larger sense which I incline to think is the intention of the Ordinance—the place of a person's occupation which is a source of

profit or income, whether it be a trade, business, profession or vocation. According to the Oxford Dictionary, the phrase is usually used in the special sense and includes a shop, office, warehouse or commercial establishment. Mr. H. V. Perera contended that an advocate could have no place of business, the word "business" having no application to the calling of an advocate, and his travelling from his house or chambers to the Courts does not fall within section 10 (a). The Deputy Solicitor-General argued that his chambers in his residence are not a place of business of his, and that his movement to the Courts and back must be regarded as travel between his residence and place of business which, he said, was the Courts. The question is not free from difficulty. Several cases were cited to us which, however, are of no real help as there is nothing similar to section 10 (a) in the English or the Indian Acts. I cannot agree with the Deputy Solicitor-General that the assessee's chambers cannot be regarded as his place of business or at any rate one of his places of business. He does there that work of an advocate which is not done in the Courts, and a place where he does his professional work must be regarded as his place of business, accepting the word in the general sense of meaning his income-yielding occupation. He does in chambers the work of an advocate and receives remuneration for it. In the Courts he also does the work of an advocate, but of another class, for which he receives remuneration. Some work for which he is remunerated may be done partly in chambers and partly in Court.

If I am right in my view that both his chambers and the Courts are his places of business, his expenses of travelling from one to the other will not be within the section. Whether he is entitled to a deduction for them or not will depend on whether they are to be regarded as outgoings or expenses incurred by him in the production of his income; this question, however, is not before us.

In my opinion one cannot say that his movement to the Courts is not from his chambers for the reason that the chambers are part of his residence and that he may not leave direct from chambers to the Courts but that he may probably leave from his residence, assuming that there are separate exits. But these are superficial considerations which do not touch the real question. We are concerned with the assessee as an income-producing individual and his work and movements as such; we have the fact that for a certain part of the day before 11 o'clock he is engaged in that work in his chambers and that he then proceeds with, I take it, the least possible loss of time to begin in the Courts another class of work, or it may be another stage of work already partly done in chambers. His movement is from one place of business to another and it cannot cease to be that for the reason that he may in the interval, for some purpose, enter the residential part of his house. Section 10 (a) deals with travel from one's residence to a place where one's business begins and from which one returns to one's residence. Such travelling is unconnected with one's business and its cost is placed in the same class as expenses of a domestic or private nature.

I therefore hold that the expenses incurred by the assessee in travelling from the premises in which are his residence and his chambers to the



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Courts are not costs of travel between his residence and place of business or employment within the meaning of section 10 (a) of the Income Tax Ordinance.

Counsel were agreed that as this was a test case we should make no order as to costs. The assessee is, however, entitled to a refund of the fee of Rs. 50 paid under section 74 (1).

*Appeal allowed.*

