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No. 7 OF 1971

Supreme Court of Ceylon
No. 3 of 1967

Income Tax Case Stated
BRA—339

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

THE COMMISSIONER OF INLAND REVENUE

of Colombo.....(*Assessor-Respondent*)
Appellant.

AND

J. M. RAJARATNAM of No. 83, Chatham Street,

Colombo 1.....(*Assessee-Appellant*)
Respondent.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
-7 APR 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD
OF PROCEEDINGS

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RECORD OF PROCEEDINGS

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No. 1

DETERMINATION AND REASONS OF THE DEPUTY COMMISSIONER OF INLAND REVENUE ON THE APPEAL OF J. M. RAJARATNAM AGAINST THE ASSESSMENT MADE ON HIM FOR THE YEAR 1958/59

File No. 23/108/431.

Determination and Reasons issued under Section 75 (2) of the Income Tax Ordinance

10 APPEAL OF Mr. J. M. RAJARATNAM, CHARTERED ACCOUNTANT, AGAINST THE ASSESSMENT MADE ON HIM FOR THE YEAR 1958/59 HEARD BY THE DEPUTY COMMISSIONER ON 11th SEPTEMBER, 1966, AND THE 6th NOVEMBER, 1966

Present for the Appellant: Mr. S. Ambalavanar, Advocate, instructed by Mr. C. Natchiketa, Proctor.

Mr. J. M. Rajaratnam, the Appellant.

Supporting the Assessment: Mr. O. F. Perera, Assessor, Unit 3 B.

Documents produced:

(a) *For the Appellant:*

A 1-Deed of Covenant dated 1st February, 1958.

A 2-Deed of Covenant dated 1st February, 1958.

A 3-Notice of Assessment for the year 1958/59.

(b) *For the Assessor:*

R 1-Appellant's letter to the Assessor dated 5.4.65.

Grounds of Appeal:

The payments made by the appellant on two Deeds of Covenant have not been allowed as a deduction from the statutory income in ascertaining the assessable income.

Facts:

30 The appellant went to England and qualified as a Chartered Accountant. On his return he was employed as an Audit Assistant in the firm of Messrs. Ford, Rhodes, Thornton & Company, Colombo, Chartered Accountants. His return for the year 1958/59 showed that his total net income for the year to 31st March, 1958, was Rs. 25,101.

40 The appellant executed two Deeds of Covenant, marked A1 and A2, on 1st February, 1958. By A1 he agreed to pay annually to his brother, Mailvaganam Paramanandan, for a period of seven years Rs. 1,500 per annum. By A2 he agreed to pay his brother Mailvaganam Sathanandan, for a period of seven years Rs. 1,500 per annum. The amounts agreed on the covenants have been paid in respect of

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the year ended 31.3.58. Both Mr. Mailvaganam Paramanandan and Mr. Mailvaganam Sathanandan have disclosed the amounts paid to them on A1 and A2 in their returns and they have been taxed on these amounts. The brothers were not so well off financially as the appellant. There was both a moral and social obligation to help the brothers. The payments were made out of bounty.

Arguments for the Appellant:

Under Section 15 (1) of the Income Tax Ordinance, Cap. 242, in arriving at the assessable income an assessee is entitled to a deduction for annuity paid. The amounts paid in terms of A1 and A2 are annuities. 10

In the U.K. annual payments made are allowed as deductions. According to "Tax Planning" by Potter (4th Edition) periodical payments subject to certain restrictions are allowable deductions (vide Chapter 1 on Deeds of Covenant).

The U.K. practice is also shown in an article on Deeds of Covenant in "Taxation" of July 2, 1966 (Volume LXXVII, No. 2021). According to this article, the four criteria necessary for a payment on a Deed of Covenant to be allowed are :

- (1) the payment must be capable of recurrence, 20
- (2) the payment must be made by reference to a year,
- (3) the payment must be made under a legal obligation,
- (4) the payment must clearly constitute pure income and profit of the recipient.

The practice in the U.K. is also shown in "Notes on Recent Cases" appearing in the September/October issue of 1965 of the British Tax Review, at page 328, under the heading "Annual Payments or Instalments of Capital".

In Ceylon, documents providing for the payment of annuities are recognised by Section 26 of the Stamps Ordinance (Cap. 247, Section 44 of this Ordinance) provides for documents which have been under-stamped to be properly stamped. A1 and A2 have been stamped as annuities. 30

The case of the Commissioner of Inland Revenue *v.* Ramsay (XX T.C. 79) is also authority for the deduction of annuity paid from income.

Determination :

I hold that the payments made on A1 and A2 are not annuities. Accordingly the claim for a deduction of Rs. 3,000 in arriving at the assessable income is disallowed and the assessable income for the year 1958/59 is confirmed at Rs. 28,101. 40

Reasons :

The word "annuity" is not defined in the Ordinance. In order to ascertain its meaning it will therefore be useful to examine the following Sections of the Income Tax Ordinance in which the word "annuity" occurs :—

Section 6 (1)—For the purposes of this Ordinance, "profits and income" or "profits" or "income" means

(f) any charge or annuity.

10 Section 12—For the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of

(j) any annuity, ground rent or royalty.

Section 15 (1)—The assessable income of a person for any year of assessment shall be his total statutory income for that year subject to the following deductions :—

(a) sums payable by him for the year preceding the year of assessment by way of interest not allowable under section 11 (1) (g), annuity, ground rent, or royalty :

20 Provided that—

(i) where under Section 13 the statutory income arising from any source has been computed by reference to the profits or income of any period other than the year preceding the year of assessment, the interest, annuity, ground rent, or royalty payable in respect of such source shall be computed on the like basis ;

30 (ii) no deduction shall be allowed in respect of any sum payable by way of interest, annuity, ground rent, or royalty by a person out of Ceylon to another person out of Ceylon.

Section 45 (1)—Where any person in Ceylon pays or credits to any person or partnership out of Ceylon any sum falling due after the 31st day of March, 1932 but before the first day of April, 1951 being—

.

40 (b) rent, ground rent, royalty, or annuity, which is payable either in respect of property in Ceylon or out of income arising in Ceylon, etc., etc.

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It is sufficient for the present to note from the above Sections the following characteristics of annuities—

- (a) There are income annuities which can be assessed to tax and there are outgoing annuities which can be allowed as deductions from other income.
- (b) Annuities, like rent and interest, arise from a source.

The claim for deduction of the payments made on A1 and A2 are based on the ground that they are annuities, but the source in respect of which the so-called annuities have been paid out has not been made clear.

10

In discussing the word “annuity”, Lord Hanworth, M.R. quoting from a Judgment of Mr. Justice Hamilton stated as follows :—

“In the course of his judgment he said at page 643 : “ ‘insurance’ and ‘annuity’ are words not of scientific law but of common business.” This statement adds a justification for the examination of the facts to ascertain the nature and the business meaning of the contract made.” (XIV T.C., 622).

The Income Tax Manual, Second Edition, published in August, 1935, contains a reference to annuity received in paragraph 1155, which reads as follows :—

20

1155. *Annuities received—basis of liability*—The Ordinance specifically taxes all annuities under Section 6 (1) (f), including those where the annuitant accepts an annuity as a consideration for the transfer of property or receives an annuity from an Insurance Company in return for a lump sum or annual premiums. No allowance is normally due for the fact that every such annuity includes an element of return of capital.

The only exception to this rule is the case of an annuity which is payable for a fixed term of years in consideration of a lump sum payment or annual premiums—e.g., educational policies taken out by parents to provide for the education of their children. In such cases the annuity paid by the Insurance Company, usually for a short term of years, should be divided between return of capital and interest, only the interest portion being taxable. The necessary division will be supplied on request by the Insurance Company concerned.

30

The explanations and rulings given in the Manual, as the Acting Commissioner says in the preface to the Second Edition, represent the opinion of the Commissioner only and have no legal force. The comment on annuities received reproduced above is, however, useful in that it indicates that in the case of an annuity there is a conversion of capital into income. If this test is applied it is found that in respect of payments made on A1 and A2 there is no conversion of capital into income.

40

There is a long line of decisions of income tax cases in which the word "annuity" has been discussed. In *Scoble v. Secretary of State for India* (IV T.C., 478) the question as to whether certain payments made by the Secretary of State for India to exercise the option of purchasing the undertaking of a railway company by payment of an annuity for a term of years instead of a lump sum was discussed. At Page 485 Phillimore J. stated :

10 " Now there is an excellent definition of ' annuity ' given by *Baron Watson* in the case of *Foley v. Fletcher*—' an annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity '. Now is not this such an annuity ? An annuity may be perpetual such as bank annuities, it may be for a long period of time such as the old long annuities ; there is an equivalent to an annuity terminable at some period or other of years in the tenure of a leasehold interest in land ; and there are annuities with which one is perhaps more often familiar—which depend upon the life of the annuitant. But in all those cases the person who procures the annuity, if he procures it for money or money's worth, purchases it and for that purpose parts with his capital which ceases to exist—never sees it again. He gets instead an annuity which except in the case of a perpetual annuity gives him a larger income than he would have had if he had put his capital out at interest."

20

The judgment of the Court of Appeal is given at page 618 of T.C. IV. At page 619, Vaughan Williams L.J. stated :—

30 " In our judgment, this appeal ought to succeed. I assent to a great deal that the Attorney-General has said about annuities ; but it seemed to me that the outcome of this argument left him in this position :—He could not say that every annual payment which was payable under a contract was necessary and necessarily an annuity within the Income Tax Acts. "

On page 621, Sterling L.J. stated :

40 " And similar observations are made by *Baron Watson* who says ' an annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principle having been converted into an annuity '. Annuities are made chargeable by expressed words. The words " other annual payments in the same section mean payments *ejusdem generis*, namely, as profits. "

At page 622, Mathew L.J. stated:—

" 'Annuity' in the ordinary sense of the expression means the purchase of an income. It generally involves the conversion of capital into income and reasonably enough where the buyer placed himself in that position the Act of Parliament taxes him. "

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In the case of *Perrin v. Dickson* (XIV T. C., 608) the question as to whether certain payments received by an appellant were taxable as annuities was considered. At the hearing in the King's Bench Division, Rowlatt J. stated as follows :—

“ now the question is whether the boy having lived and these sums having been paid to the Appellant, that is an income annuity liable to Income Tax and taxable under the Income Tax Acts. In these cases the argument always goes back to Baron Watson's statement in *Foley v. Fletcher*, where he says (1) : “ Where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity ”. I do not think that has ever been questioned as a substantial definition of what an annuity is. I think many of the cases have practically adopted it. At any rate, it seems to me quite accurate to say, as far as I know, that when you buy an annuity it means that you spend your capital in buying income ; you have not any longer got capital but you have got income. It is very easy to say that ; the difficulty is when one comes to apply it. ” (page 614). 10

“ The question is whether what is being done is liquidating a principal sum. If the principal sum has gone and been converted into something else, there is an annuity : but if you are liquidating a principal sum it is not an annuity. ” (page 615). 20

“ If you buy an annuity for your life you take leave of the principal sum, because it is not to be found anymore. ” (page 615).

In the hearing before the Court of Appeal, Lord Hanworth M.R. stated as follows :—

“ For the purpose of the Revenue the substance of the matter must be regarded. It matters not whether in the contract it is, or is not, called an annuity. If in truth and in fact it is an annuity no dressing of the transaction can alter its character. ” (page 619). 30

“ Another interesting test was suggested by Mr. King, derived from the case of *Winter v. Mousely*, 2 B & Ald. 802, which was cited to the House of Lords by Sir R. Finley in Scoble's case. The question was whether a bond was an annuity bond within the terms of 49 Geo. III C. 121, Section 17, and Mr. Justice Best said that he understood the meaning of an annuity to be when the principal is gone for ever and it is satisfied by periodical payments ”. (page 622).

Lawrence L.J. said— 40

“ It is clearly settled that not every annual payment payable as a personal debt or obligation by virtue of a contract is an annuity or annual payment within the meaning of Rule 1 of the Rules applicable to Case III. For instance, if a creditor were to

agree with his debtor to accept payments of an existing debt by annual instalments, such annual instalments would not be annual payments within the Rule." (page 625).

From the statements of the Judges quoted above, it follows that—

- (a) all annual payments are not annuities ;
- (b) in an annuity there is a conversion of capital into income.

In the case of the payments made on A1 and A2, it is clear that they are no more than annual payments and are, therefore, not allowable as deductions.

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10 Now, coming to the authorities cited by Counsel, they will be relevant if the law in Ceylon is the same as the law in the United Kingdom. For purposes of comparison with the Sections mentioned earlier the following Sections are quoted from the U.K. Income Tax Act, 1952—

123. (1) Tax under Schedule D shall be charged under the following Cases respectively, that is to say—

- Case I—tax in respect of any trade carried on in the United Kingdom or elsewhere ;
- 20 Case II—tax in respect of any profession or vocation not contained in any other Schedule ;
- Case III—tax in respect of—
 - 30 (a) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods ; and
 - (b) all discounts ; and
 - (c) profits on securities bearing interest payable out of the public revenue, other than such as are charged under Schedule C ;

169. (1) Where any yearly interest of money, annuity or other annual payment is payable wholly out of profits or gains or gains brought into charge to tax—

- 40 (a) no assessment shall be made on the person entitled to the interest, annuity or annual payment ;

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170. (1) Where—

- (a) any interest of money, annuity, or other annual payment charged with tax under Schedule D or ;
 (b) ,
 (c) ,

is not payable or not wholly payable out of profits , etc.,
 etc.

It will be found that these Sections provide for the assessment or deduction of any annuity or other annual payment. In Ceylon only the word 'annuity' occurs in the relevant Sections. The omission of annual payments in the Ceylon Ordinance is significant and is by itself sufficient for the disallowance of annual payments which are not annuities. 10

In "Tax Planning" by Potter, cited by Counsel, the first chapter deals with Deeds of Covenant. The tax implication of annual payments on Deeds of Covenant similar to A1 and A2 are discussed in this chapter. The only reference to annuities in this chapter is in the words occurring at page 19 where it is said "a testator can, therefore, validly direct the payment of an annuity to be made 'tax-free' or 'free of tax'". In the chapter on Wills, commencing on page 448, annuities are discussed at length. The following paragraph is significant :— 20

"ANNUITIES—

It was formerly common to make provision for dependants, other than the residuary legatees, by bequeathing annuities to them for life. Today, in view of the high rates of income tax and surtax and the liability to a claim for death duty on the death of an annuitant, great caution should be exercised in advising a testator who desires to leave a number of annuities. Many of the points which arise in practice are fully discussed in connection with the precedents of wills which appear later in this chapter ; it may be useful, however, if a number of points are mentioned here." 30

The author here points out the disadvantages in creating annuities as opposed to the advantages in entering into deeds of covenant to provide for annual payments discussed in Chapter I. Clearly, annual payments and annuities mean two different things to the author.

The articles on Deeds of Covenant in Taxation of July 2, 1966, LXXVII does not carry the appellant any further than Potter on Tax Planning. 40

Determination :

For the reasons given above, I determine that the payments made on the deeds of covenant A1 and A2 are not annuities. At the hearing of the appeal on 6th November, 1966, in terms of Section 73 (6), I recorded the following determination in writing and announced it orally :

10 “ I hold that the payments made in deeds of covenant marked A1 and A2 are not annuities and that they are, therefore, not deductions allowable from statutory income in arriving at assessable income in terms of Section 15 of the Income Tax Ordinance. I confirm the assessment for 1958-59 in a sum of Rs. 28,101.”

In terms of Section 75 (1) Counsel for the appellant expressed dissatisfaction with my determination, orally, immediately after it was announced by me. Accordingly, this determination and reasons therefor are issued in terms of Section 75 (2).

(Sgd.).....
Deputy Commissioner of
Inland Revenue.

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4.1.67.

No. 2

**APPEAL OF J. M. RAJARATNAM TO THE BOARD OF
REVIEW AGAINST THE DETERMINATION OF THE DEPUTY
COMMISSIONER OF INLAND REVENUE**

**Board of Review constituted in terms of Section 75 of the
Income Tax Ordinance**

File No. 23/108/431.

YEAR OF ASSESSMENT 1958/59

I, Jesuthasan Mylvaganam Rajaratnam, Chartered Accountant of 91, McCarthy Road, Colombo 7, Appellant, hereby appeal to the Board of Review in terms of Section 75 of the Income Tax Ordinance (Chapter 242) against the decision of the Commissioner in respect of the above year of Assessment. The grounds of appeal are that the payments under the Deed of Convention A 1 and A 2 being annuities must be deducted in arriving at the assessable income in terms of Section 15 of the Income Tax Ordinance. 10

A copy of the Commissioner's decision is enclosed herewith in terms of Section 75 (3).

(Sgd.)
JESUTHASAN MYLVAGANAM RAJARATNAM,
Appellant,
91, McCarthy Road, Colombo 7. 20

4th January, 1967.

No. 3

DECISION OF THE BOARD OF REVIEW

BRA—339

No. 3.
Decision of the
Board of
Review—
23.8.67.

Income Tax File No. 23/108/431.

Members of the Board : Mr. N. Edirisinghe
Mr. R. Ramachandran

Dates of Hearing : 2nd, 20th March and 8th April, 1967.

Present for the Appellant : Mr. S. Ambalavanar, Advocate.

Supporting the Assessment : Mr. P. Naguleswaran, Crown Counsel,
Mr. C. F. Perera, Assessor.

10 *Decision of the Board :*

The assessee is a chartered accountant employed as an Audit Assistant in the firm of Messrs Ford, Rhodes, Thornton & Co. On 1st February, 1958, the assessee agreed in writing to pay annually to his brother, Mr. Mailvaganam Paramanathan, for a period of seven years the sum of Rs. 1,500 per annum. On the same date the assessee agreed in writing to pay annually to his brother, Mr. Mailvaganam Sathanathan, for a period of seven years the sum of Rs. 1,500 per annum. The two agreements which are similar are marked (A1) and (A2).

20 The Agreement (A1) is in the following terms :—

Covenant to pay an Annuity

“ I, Jesuthasan Mylvaganam Rajaratnam of No. 30, Boswell Place, Colombo 6, in consideration of the natural love and affection I have for my brother, Mailvaganam Paramanathan, hereby covenant that for a period of seven years from the year ending 31st March, 1958 (being treated as the first year) or during the residue of my life whichever period shall be shorter, I will pay annually to the said Mailvaganam Paramanathan during his life the sum of Rs. 1,500 (Rupees One Thousand Five Hundred).”

30 The assessee has paid the two sums of Rs. 1,500 to his brothers under the said agreements for the year ended 31st March, 1958. He claimed that the sums of money which he paid under these agreements were annuities payable by him to his two brothers and were deductible under section 15 (1) of the Income Tax Ordinance in arriving at his assessable income. The assessor disallowed the deduction of the two sums of Rs. 1,500 paid under the two agreements and assessed the assessable income of the assessee at Rs. 28,101.

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23.6.67—
(contd.)

The assessee appealed to the Commissioner of Inland Revenue against this assessment and the Deputy Commissioner who heard the appeal has by his Order dated 1st December, 1966, confirmed the assessment. The assessee has now appealed to this Board.

The ground of appeal is that the payments made by the assessee under the agreements (A1) and (A2) being annuities must be deducted in arriving at the assessable income in terms of section 15 of the Income Tax Ordinance.

Whether the two agreements (A1) and (A2) give to the grantees legal rights which they can enforce is one of the matters on which the parties to this appeal are not agreed. Crown Counsel who supported the assessment made submission that the agreements (A1) and (A2) contain the arrangements made by the assessee to assist his two brothers who were in need of financial assistance and such an arrangement though reduced to writing did not give his brothers any legal rights. He relied on the case of *Balfour v. Balfour* 1919(2) K.B. 519.) Counsel for the assessee submitted in reply that the assessee was under a social and moral obligation to render assistance to his brothers and this obligation was sufficient consideration in law to give legal rights to the two brothers under the agreements—(A1) and (A2). He relied on the case of *Jayawickrema v. Amarasuriya* (20 N.L.R. 289). For the reasons given hereafter it is not necessary for us to consider these submissions and the cases cited in support.

Stamp Duty has been recovered on the two agreements (A1) and (A2) as is recoverable under the Stamp Ordinance on an instrument creating an annuity. Mr. M. Paramanathan and Mr. M. Sathanathan have disclosed in their Income Tax Returns the two sums of Rs. 1,500 paid to them by the assessee under the agreements (A1) and (A2), and these sums have been included in the assessments made on them for income tax. Counsel for the assessee who mentioned these matters at the hearing of the appeal conceded that neither the decision of the Commissioner on the amount of stamp duty leviable on the two agreements (A1) and (A2), nor the decision of the Assessor to include these two sums of Rs. 1,500 in the assessable income of the recipients is decisive of the matter before the Board.

The submission made on behalf of the assessee is that any payment is an annuity provided it had the following characteristics :—

- (a) the payment must be made under a legal obligation ;
- (b) the payment must constitute profit or income of the recipient ;
- (c) the payment must be capable of recurrence ;
- (d) the payment must be made by reference to a year.

Counsel relies on an article on Deeds of Covenant in " Taxation " of 2nd July, 1966 (Vol. LXXVII No. 2021). As against this submission Crown Counsel has argued that the word ' annuity ' has acquired

a well-defined meaning in the law of taxation and this word when used in a taxing statute means no more than income derived by the surrender or extinction of capital. He cited the case of *Holly v. Fletcher* (1958, 28 L. J. Ex. 100); *Scoble v. Secretary of State for India* (1903 A.C. 299); *Perrin v. Dickson* (1929 A.E.R. 685); *Southern Smith v. Clancey* (1941 (1) A.E.R. 111); *Inland Revenue Commissioner v. Wesleyan & General Insurance Society* (1948 (1) A.E.R. 555).

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10 The question before the Courts in all these cases was the same, viz., whether the sum of money which had been described as annuity was assessable to tax as income of the payee. Sir Wilfred Greene, M. R., in his judgment in *Southern Smith v. Clancey*, stated :

“ It is clear than an annuity or other annual payment falls to be charged with tax as being annual profit or gain and this is the reason why it becomes necessary to examine the nature of an annual payment in order to see whether it is in truth an income or capital payment—a question which cannot be answered merely by pointing to the fact that it is annual. ”

20 This rule which has been enunciated in considering the question whether a sum of money described as annuity is assessable income would be applicable even in considering the question whether a sum of money described as annuity is a permitted deduction.

30 The ordinary meaning of the word annuity is not free from ambiguity. Often it is used to describe any annual payment irrespective of the consideration for the payment. The meaning to be given to a word used in a statute may differ from its ordinary meaning— vide *Commissioner of Inland Revenue v. South-Western Bus Co. Ltd.* (1966 N.L.R. 389). This word ‘ annuity ’ occurs in section 6 (1), section 12, section 15 (1) and section 45 (1) of the Income Tax Ordinance. These sections in so far as they are relevant to this case are as follows :—

“ Section 6 (1). For the purposes of this Ordinance “ profits and income ” or “ profits ” or “ income ” means

(f) any charge or annuity.

“ Section 12. For the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of

(j) any annuity, ground rent or royalty.

40 “ Section 15 (1). The assessable income of a person for any year of assessment shall be his total statutory income for that year subject to the following deductions—

- (a) sums payable by him for the year preceding the year of assessment by way of interest not allowable under section 11(1)(g), annuity, ground rent, or royalty :

Provided that—

- (i) where under section 13 of the statutory income arising from any source has been computed by reference to the profits or income of any period other than the year preceding the year of assessment, the interest, annuity, ground rent, or royalty payable in respect of such source shall be computed on the like basis ; 10
- (ii) no deduction shall be allowed in respect of any sum payable by way of interest, annuity, ground rent, or royalty by a person out of Ceylon to another person out of Ceylon.

“Section 45 (1). Where any person in Ceylon pays or credits to any person or partnership out of Ceylon any sum falling due after the 31st day of March, 1932, but before the first day of April, 1951, being— 20

.....

- (b) rent, ground rent, royalty, or annuity, which is payable either in respect of property in Ceylon or out of income arising in Ceylon etc. etc.”

Tax is chargeable under the Income Tax Ordinance on profits and income. Capital cannot be charged with tax as if it were income except by a statutory definition which extends the ordinary meaning of profits and income. Thus Capital Gains are taxed as income only because these have been expressly brought within the definition of profits and income. An annual payment which a person receives as capital not being profits or income cannot come within the meaning of annuity in section 6 (1). The cases of *Holly v. Fletcher* ; *Scoble v. Secretary of State for India* ; *Perrin v. Dickson* ; *Southern Smith v. Clancey and Inland Revenue Commissioner v. Wesleyan & General Insurance Society* referred to above are authorities for the proposition that a capital sum received is not an annuity when that sum is paid in annual instalments over a period of time. The nature of the payment is the same whether there is a single payment of the whole sum or differed payment of the same sum in annual instalments. 30 40

Sections 11 and 12 of the Income Tax Ordinance are sections under Chapter 12 which contain the provisions in the ascertainment of profits or income from each source of profit and income. Section 11 gives the kinds of expenditure allowed to be deducted and section 12 gives the kinds of expenditure not allowed to be deducted in ascertaining the profits and income from each source. The deductions which are disallowed under paragraphs (c) and (g) of section 12 are the following :—

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Decision of the
Board of
Review.
23.6.67—
(contd.)

(c) any expenditure of capital or loss of capital ;

10 (g) any annuity, ground rent or royalty.

The word “annuity” in paragraph (g) cannot include any expenditure of capital or loss of capital in paragraph (c). The word “annuity” in this section must mean only income expenditure, the opposite of capital expenditure.

Section 15 allows the deduction of annuities, ground rent and royalty which are not allowed to be deducted under section 12. The word “annuity” in section 15 must be given the same meaning as in section 12 and that is it must mean a payment made having the character of income expenditure. In Commissioner of Inland
20 Revenue *v.* D. B. J. de Silva (64 N. L. R. 65) the assessee purchased the business of a dispensary carried on by another agreeing to pay Rs. 6,000 as part of the purchase price and a further payment of 30 per cent. of the gross receipts derived from the business for 13 months. He claimed that the monthly payments were annuities deductible in arriving at the assessable income under section 15. T. S. Fernando, J. in his judgment in this case held that the assessee was not entitled to have the monthly payments deducted in
30 order, the judgment of T. S. Fernando, J. in *C. I. R. v. D. B. J. de Silva* is of considerable assistance on the question of law we have to decide.

It remains for us to decide whether the payments made under the agreements (A1) and (A2), are income expenditure or capital expenditure. The nature of the payment by the payer is not the same as the nature of the receipt by the recipient. The payment

No. 3.
Decision of the
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(contd.)

of capital by the person paying can be a receipt of income by the person receiving it—*vide* Ella Mac Pheeters *v.* Inland Revenue Commissioners (1946 (1) A. E. R. 159). The matter to be decided in this case is the nature of the payment by the assessee and not the nature of the receipt by his two brothers. The payments made under the agreements, (A1) and (A2) are not attributable to a source of income and therefore did not come within the category of income expenditure.

For the reasons given in this Order we are of opinion that these payments are not annuities within the meaning of section 15 of 10
Income Tax Ordinance and not deductible in arriving at the assessable income of the assessee.

The appeal is dismissed.

We make no order for costs.

(Sgd.)
Chairman of the Board.

Colombo, 23.6.1967.

No. 4

**APPLICATION OF J. M. RAJARATNAM TO THE BOARD
OF REVIEW REQUIRING TO STATE A CASE FOR THE
OPINION OF THE SUPREME COURT**

Jesuthasan Mylvaganam Rajaratnam,
91, McCarthy Road, Colombo 7,
5th July, 1967.

The Board of Review,
Income Tax,
Senate Square, Colombo 1.

10 Gentlemen,

Income Tax No. 23/108/431

Appeal for the Year of Assessment 1958/59

I hereby apply that the Board be pleased to state a case for the opinion of the Supreme Court. I enclose herewith the fee of Rs. 50/- in terms of Section 78 (1) of the Income Tax Ordinance (Chap. 242).

The question of law apart from those that may be raised at the hearing of the Appeal is :

20 That the payments made under Deeds of Covenant being annuities are deductible in arriving at the assessable income in terms of Section 15 (1) of the Income Tax Ordinance (Chap. 242).

Yours faithfully,

(Sgd.) J. M. RAJARATNAM.

No. 4.
Application of
J. M. Rajarat-
nam to the
Board of
Review
requiring to
state a case for
the Opinion of
the Supreme
Court—
5.7.67.

No. 5.
Case Stated for
the opinion of
the Supreme
Court—
31.8.67.

No. 5

**CASE STATED FOR THE OPINION OF THE SUPREME
COURT**

**Case stated for the Opinion of the Honourable the Supreme Court
under the provisions of Section 74 of the Income Tax Ordinance
(Chapter 242) upon the Application of J. M. Rajaratnam**

1. At a meeting of the Board of Review held on 2nd March, 1967, and on adjournment on 20th March and 8th April, 1967, the appeal of J. M. Rajaratnam, hereinafter called the assessee, against an assessment to income tax for the year of assessment 1958/59 was heard. The assessee appealed against this assessment on the ground that it included annuities of Rs. 3,000 paid by him to his brothers M. Paramanathan and M. Sathanathan. 10

2. On 1.2.1958, the assessee executed the agreement A1, marked A1 which is in the following terms:—

“ I, Jesuthasan Mylvaganam of 30, Boswell Place, Colombo 6, in consideration of the natural love and affection I have for my brother, Mailvaganam Paramanathan, hereby covenant that for a period of seven years from the year ending 31st March 1958 (being treated as the first year) or during the residue of my life, whichever period shall be shorter, I will pay to the said Mailvaganam Paramanathan during his life the sum of Rs. 1,500 (Rupees one thousand Five Hundred).” 20

3. On 1.2.1958 the assessee executed another agreement marked A2, similar to A1, by which he agreed to pay annually to his brother Mailvaganam Sathanathan for a period of seven years the sum of Rs. 1,500 per annum.

4. The assessee paid the two sums of Rs. 1,500 to his brothers under the said Agreements for the year ended 31st March, 1958. The two sums of Rs. 1,500 paid to M. Paramanathan and M. Sathanathan have been included in the assessments made on them for income tax. 30

5. The assessee claimed that the two sums of Rs. 1,500 paid by him to his brothers in the year ended 31.3.1958 were annuities payable by him and these sums were deductible under section 15 (1) (a) in ascertaining his assessable income for the year of assessment 1958/59.

6. The Assessor disallowed a deduction under section 15 (1) (a) of the two sums of Rs. 1,500 paid by the assessee to his two brothers and assessed the assessable income of the assessee at Rs. 28,101. 40

The assessee appealed to the Commissioner of Inland Revenue against this assessment and the Deputy Commissioner who heard the appeal confirmed the assessment. A copy of the Order made by the Deputy Commissioner is attached hereto marked XI.

No. 5.
Case Stated for
the opinion of
the Supreme
Court.
31.8.67—(contd.)

7. The assessee appealed to the Board of Review against the decision of the Deputy Commissioner. At the hearing of the appeal before the Board of Review it was submitted on behalf of the assessee—

- 10 (a) the two Agreements A1 and A2 created legally enforceable obligations in favour of M. Paramanathan and M. Sathanathan ;
- (b) the sums of money payable by the assessee under the Agreements A1 and A2 are annuities deductible under section 15 (1) (a) of the Income Tax Ordinance.

8. Crown Counsel who supported the assessment on behalf of the Commissioner of Inland Revenue contended—

- (a) the sums of money paid by the assessee to his two brothers were personal gifts of capital. The execution of the two Agreements did not alter the capital nature of these gifts ;
- 20 (b) an annuity is a receipt of income derived from the surrender or extinction of capital. The sums of money paid by the assessee to his brothers did not have the characteristic of an annuity.

9. We the members of the Board who heard the appeal held by our Order dated 23.6.67 that the assessee was not entitled to a deduction under section 15 (1) (a) of the sums of money paid to his two brothers as—

- 30 (a) the word ' annuity ' in sections 12 and 15 of the Income Tax Ordinance means an annual payment which has the characteristic of income expenditure ;
- (b) the payments made by the assessee to his brothers were not income expenditure.

A copy of the Order made by the Board is attached hereto marked X2.

- 40 10. The decision of the Board was communicated to the assessee and the Commissioner of Inland Revenue by letter dated 26th June, 1967. Dissatisfied with the decision of the Board, the assessee by his communication on 5.7.67, a copy of which is attached hereto marked X3, applied to the Board to have a case stated for the opinion of the Supreme Court on the question of law arising in this case.

No. 5
Case stated for
the Opinion of
the Supreme
Court—31.8.67
(contd.)

11. The questions of law on which the opinion of the Supreme Court is sought is—

- (a) are the two sums of Rs. 1,500 paid by the assessee to his brothers annuities payable by him ;
- (b) are the two sums of Rs. 1,500 paid by the assessee to his two brothers deductible under section 15 (1) (a) of the Income Tax Ordinance.

12. The tax in dispute is Rs. 686.

- 1. (Sgd.) E. EDURISINGHE,
- 2. (Sgd.) R. RAMACHANDRAN,
- 3.

10

Members of the Board.

August 31, 1967.

JUDGMENT OF THE SUPREME COURT

No. 6.
Judgment of the
Supreme Court-
10.12.69.

Case stated for the opinion of the Supreme
Court under S. 74 of Chapter 224.

S.C.3/67 Income Tax BRA 339

J. M. Rajaratnam, *Assessee-Appellant*

and

The Commissioner of Inland Revenue, *Assessor-Respondent.*

Present : SAMERAWICKRAME, J. & WEERAMANTRY, J.

10 *Counsel* : S. Ambalavanar with M. Radhakrishnan for the assessee-appellant.

H. Deheragoda, Senior Crown Counsel (now Deputy Solicitor-General) with P. Naguleswaran, Crown Counsel, for the assessor-respondent.

Argued on : 20th, 21st, 22nd and 25th July, 1968.

Decided on : 10th December, 1969.

SAMERAWICKRAME, J.

20 The appellant executed two agreements or deeds of covenant in favour of two of his brothers. By each agreement the appellant undertook that for a period of seven years or during the residue of his life whichever period should be shorter he would pay annually to the brother named therein during his life the sum of Rs. 1,500/-. The two sums of Rs. 1,500/- were paid to his brothers and they have been returned by them and included in the assessments made on them for income tax. The Appellant claimed that the two sums paid to his brothers were annuities payable by him and were deductible under Section 15 (1) (a) of the Income Tax Ordinance in ascertaining his assessable income for the year of assessment 1958/59.

30 The assessor disallowed deduction of the two sums and assessed the assessable income of the assessee at Rs. 28,101/-. An appeal was made to the Commissioner against the assessment and the Deputy Commissioner who heard the appeal confirmed the assessment. On an appeal to it the Board of Review held that the appellant was not entitled to a deduction of the two sums paid by him to his two brothers. On an application by the appellant the Board has stated a case for the opinion of this Court on the following :—

(a) are the two sums of Rs. 1,500/- paid by the assessee to his two brothers annuities payable by him,

(b) are the two sums of Rs. 1,500/- paid by the assessee to his two brothers deductible under s. 15 (1) (a) of the Income Tax Ordinance.

There is no definition of annuity in the Ordinance. The Oxford English Dictionary gives the following meanings :—

“ (1) A yearly grant, allowance, or income.

(2) The grant of an annual sum of money, for a term of years, for life, or in perpetuity ; which differs from a rentcharge in being primarily chargeable upon the grantor's person, and his heirs if named, not upon specific land.

10

(3) An investment of money, whereby the investor becomes entitled to receive a series of equal annual payments, which, except in the case of perpetual annuities, includes the ultimate return of both principal and interest ; also, the annual (or, for convenience, quarterly) payment thus made.”

The learned Deputy Solicitor-General submitted that, in the context of Income Tax, annuity had come to have the definite meaning of an income purchased with a sum of money and relied on *Foley (Lady) v. Fletcher*¹. Simon's Income Tax (1964-65) Vol. 2, page 737 states :—

20

“ An annuity will of necessity always be an annual payment but not every annual payment is an annuity. In *Foley (Lady) v. Fletcher (supra)*, *Watson B* gave the following definition of one kind of annuity :—An annuity means where an income is purchased with a sum of money, and the capital has gone and ceased to exist, the principal having been converted into an annuity. ‘ Annuity ’ is generally used to describe annual sums of fixed amounts payable to individuals but whether an annual payment is described as an “ annuity ” or otherwise is rarely of great materiality in considering the application of Case III ”.

30

The provision in Case III contains “ any annuity or other annual payment ” Hence the distinction between annuity and annual payment is of little importance in English Income Tax Law. But in South Africa where the word “ annuity ” appears by itself in the relevant provision it has not been limited to an annuity purchased for a sum of money. Silke on South African Income Tax (3rd edition) at page 63 states :—“ In *Foley v. Fletcher* it was held that ‘ an annuity means where an income is purchased with a sum of money and the capital has gone and ceased to exist, the principal having been converted into an annuity ’. Whereas this definition meets the case of the ordinary type of annuity purchased from an insurance company, it does not cover all cases since an annuity

40

may also be granted by way of donation or inheritance without being purchased, in which event the conversion of capital into an annuity does not arise ”.

No. 6.
Judgment of the
Supreme Court—
10.12.69
—(contd.)

10 The learned Deputy Solicitor-General further submitted that in the Ordinance “ annuity ” is coupled with “ ground rent or royalty ” and that as these terms imply a *quid pro quo* annuity too must be restricted to an annuity purchased for consideration. Payment of ground rent or royalty is made for a benefit or consideration which continues to be received from the payee. A countervailing benefit to the payer or the stipulation by him for future benefit of any kind precludes a payment being considered an annuity—vide *I. R. Commissioners v. National Book League* ². The principle *noscitur a sociis* is, therefore, not appropriate for application to the interpretation of the provisions in question.

Stroud has the following quotation, “ An annuity is a yearly payment of a certain sum of money granted to another in fee, for life or years, charging the person of the grantor only (Co. Litt. 144 b) ”. Wharton’s Law Lexicon has, “ an annuity is a fixed sum payable annually either in perpetuity or for any less period ”.

20 I am of the view that ‘ annuity ’ in the Income Tax Ordinance is not limited to an annuity purchased with a sum of money but extends to other annual payments. I am fortified in my view by the fact that in *Law Society v. The Commissioner of Income Tax* ³, it was held that the annual grant of Rs. 50,000 received by the Incorporated Law Society from the Government in terms of a statute was an annuity.

30 Definitions of annuity set out above refer to fixed sums payable annually. Under the agreements entered into by the appellant the fixed sum of Rs. 1,500 is payable to each brother. It is therefore unnecessary to consider what the position would be if there is an obligation to make a payment annually but the amount of the payment varies from year to year. There is authority that fluctuating sums may nevertheless be annual payments within the provision in the English Act—vide *I. R. Commissioners v. London Corporation* ⁴.

40 The payments must not be annual instalments of a capital sum such as an antecedent debt or the consideration for purchase of property. In *the Commissioner of Inland Revenue v. Silva* ⁵, it was held that monthly sums stipulated for in an agreement were in reality part of the purchase price of a business and therefore constituted payments of a capital nature and not payment by way of annuity. In *Commissioner of Income Tax v. Nilgiriya* ⁶, it was held that the payments were in effect instalments of a fixed gross sum that was due.

No. 6.
Judgment of the
Supreme Court.
10.12.69
—(contd.)

There must be a legal obligation to make the payments. Voluntary payments even though made regularly are not annuities but gifts.

It is of the essence of an annuity that it has the quality of recurrence. Accordingly an annual payment to be an annuity it must either be recurrent or capable of recurrence. In *Asher v. London Film Production Ltd.* ⁷, Lord Greene M. R. said :

“ The payments are annual payments in the sense that they have that recurrent quality which is the distinguishing mark differentiating an income from a capital payment for these purposes. You can have an annual payment under this rule, even though it happens by some accident or other, to fall due in one year only. The question is, has it the necessary periodical or recurrent quality ?” 10

It would appear that a single payment made on a covenant for a period of years or for the life of the covenantor, whichever is shorter would be an annuity even where the covenantor died after one payment had become due and had been paid. The amount paid must be pure income or profit of the payee—vide *In re Hanbury, Coniskey v. Hanbury* ⁸. It would appear that there are a number of payments, without doubt annual, the nature and quality of which make it impossible to treat them as the pure income or profit of the recipient. An example given is that of a yearly payment made to the proprietor of a garage for the hire of a motor car. The very nature of the payment itself having regard to the circumstances in which it is made necessarily makes the sum paid in the hand of the recipient an element only in the ascertainment of his profits. Thus a yearly payment made to a tradesman for supplies or services, though it possesses all the other characteristics required, would not be an annuity. In *I. R. Commissioner v National Book League (supra)*, it was held that certain payments received by a charity under covenant in respect of which the covenantor received certain benefits were not pure income of the charity as the benefits received by the covenantors were such that it could not be said that the payments were made without conditions or counter stipulations. Simon's Income Tax (1964-65) Vol. 2, page 744 states : 20

“ There must, it seems, be a countervailing benefit in respect of each annual payment (which otherwise qualifies as such) to prevent that payment being ‘pure income profit’ of the recipient; equally a trading receipt will not satisfy the test as the references to *In re Hanbury*, ante, demonstrate ; nor will any payment which is of a kind against which the expense of earning it may properly be set in order to ascertain the taxable income therefrom ”. 40

From what I have stated above it would follow that for a payment to be an annuity it must—

- (1) be made with reference to a year though it may be paid in periodic instalments, e.g., quarterly or monthly,
- (2) not be a receipt or accrual of a capital nature to the payee,
- (3) be made under a legal obligation,
- (4) be either recurrent or capable of recurrence,
- (5) be pure income or profit of the payee.

No. 6.
Judgment of the
Supreme Court.
10.12.69—
(contd.)

10 It has not been necessary, for the purpose of this case, to decide whether the sum paid yearly must be fixed or may vary from year to year.

20 The learned Deputy Solicitor-General submitted that under our law a duty to maintain is not limited to a man in respect of his wife or child but that in certain circumstances a child is under an obligation to maintain a parent or a brother another brother and that the payments made by the appellant to his brothers were made in pursuance of an obligation under our law to maintain them and not by reason of the covenants he had entered into. Assuming that in certain circumstances a duty may arise upon a person to maintain his brother that duty would only arise where the brother is in indigent circumstances of a kind in which the law gives him the right to claim maintenance. There is no evidence in this case that the brothers of the appellant were in such indigent circumstances that there was in law an obligation on the appellant to maintain them. As the basis of fact upon which the learned Deputy Solicitor-General based his argument does not exist it is unnecessary to consider further what might have been the position had such a basis of fact been shown.

30 He further submitted that the appellant was in effect making a gift to each of his brothers of a sum of Rs. 10,500/- in yearly instalments of Rs. 1,500/- and that the payments would accordingly not constitute annuities. There is no material to show that there was an antecedent fixed sum of Rs. 10,500/- which was to be liquidated or paid in the manner provided for in the agreement. The agreement itself stipulated that payments were to be made for a period of seven years or during the residue of the appellant's life whichever period should be shorter. It also provided that the payments were to be during the lifetime of the brother. In view of the nature of the provision in the agreement it is not possible to take the view that it provided for the payment of a lump sum of Rs. 10,500/- in annual instalments of 40 Rs. 1,500/-.

The submission also raises the question as to whether payments were voluntary. The act of the appellant in entering into the agreement or covenant was no doubt voluntary in the sense that he was a

No. 6.
Judgment of the
Supreme Court.
10.12.69—
(contd.)

free agent and could have abstained from entering into it if he wished but once he had executed the agreement the payments under it were not voluntary if the agreement was a binding agreement. In that case there would be a legal contractual obligation on him to make the payments stipulated for in the agreement—vide *I. R. Commissioners v. Peters*⁹. Under our law a promise or agreement to pay money is binding if it has been accepted—vide *Public Trustee v. Udurawana*¹⁰. The covenants or agreements entered into by the appellant had been accepted and money due under them had been paid to his brothers and had been declared 10
by them as part of their income in returns made for purposes of income tax. I am, therefore, of the view that the payments made by the appellant in terms of the covenants were not voluntary but were made under a legal obligation.

The amounts of the annuities claimed as deductible by the appellant was a sum of Rs. 3,000/- as against his income of Rs. 28,101/- which is a little over ten per cent. It is unnecessary to decide in this case, and I reserve for a decision in an appropriate case when the question does arise whether payments of sums amounting to a much larger proportion of a person's income may be claimed as deductions 20
on the basis of payment by way of annuity.

I am of the view that the payments made by the appellant satisfy the characteristics of an annuity and that his claim for deduction of them from his statutory income in ascertaining his assessable income should have been allowed. I accordingly answer the two matters raised in the Case Stated :—

- (a) The two sums of Rs. 1,500/- paid by the assessee to his two brothers were annuities payable by him.
- (b) The two sums of Rs. 1,500/- paid by the assessee to his two brothers are deductible under Section 15 (1) (a) of the Income 30
Tax Ordinance.

The respondent must pay the appellant costs fixed at Rs. 262.50. The appellant will also be entitled to a refund of the sum of Rs. 50 paid under Section 78 (1).

No. 6.
Judgment of
the Supreme
Court—10.12.69
—(contd.)

(Sgd.) G. T. SAMERAWICKRAME,
Puisne Justice.

WEERAMANTRY, J.

I agree.

⁽¹⁾ 1858 3H & N 769.

⁽²⁾ 1957 Ch. 488.

⁽³⁾ 56 N. L. R. 97.

⁽⁴⁾ (1953) 1 A. E. R. 1075.

⁽⁵⁾ 64 N. L. R. 65.

⁽⁶⁾ 63 N. L. R. 176.

⁽⁷⁾ (1944) 1 A. E. R. 77, at 80.

⁽⁸⁾ 38 Tax Cases 588.

⁽⁹⁾ (1941) 2 A. E. R. 620.

⁽¹⁰⁾ 51 N. L. R. 193.

No. 7

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

In the Supreme Court of the Island of Ceylon

No. 7.
Application for
Conditional
Leave to appeal
to the Privy
Council
—8.1.70.

Case stated for the opinion of the Honourable
The Supreme Court under the provisions
of Section 74 (now 78) of the Income
Tax Ordinance (Chapter 242) upon the
application of J. M. Rajaratnam

J. M. Rajaratnam.....*Assessee-Appellant.* 10

Vs.

The Commissioner of Inland Revenue .. *Assessor-Respondent.*

S. C. (Income Tax)
Appeal No. 3 of 1967

and

S. C. Application No. 5/70
(Conditional Leave)

In the matter of an application for Conditional
Leave to Appeal to Her Majesty the
Queen-in-Council under the provisions of 20
the Privy Council (Appeals) Ordinance in
S. C. (Income Tax) Appeal No. 3 of 1967.

The Commissioner of Inland Revenue

.....*Assessor-Respondent*
Petitioner

(Applicant for Conditional Leave)

Vs.

J. M. Rajaratnam.....*Assessee-Appellant*
Respondent.

To :

30

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES
OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON.

On this 8th day of January, 1970.

The Petition of the Commissioner of Inland Revenue, the Assessor-Respondent-Petitioner (Applicant for Conditional Leave) abovenamed appearing by Solomon Christoffel Obeysekere de Livera, his Proctor, states as follows :—

No. 7.
Application for
Conditional
Leave to appeal
to the Privy
Council.
8.1.70—
(contd.)

1. The Order and/or Judgment of the Supreme Court was pronounced on the 10th day of December, 1969 allowing the appeal of the Assessee-Appellant-Respondent against the Order of the Board of Review. By the said Order the Assessee-Appellant-Respondent was also awarded costs fixed at Rs. 262.50 and declared
10 entitled to a refund of the sum of Rs. 50/- paid under Sub-section (1) of Section 78 of the Income Tax Ordinance.

2. That being aggrieved by the said Order and/or Judgment of Your Lordships' Honourable Court pronounced on the 10th day of December, 1969 the Assessor-Respondent in the above Income Tax Appeal No. 3 of 1967 is desirous of appealing therefrom to Her Majesty the Queen-in-Council.

3. That the said Order and/or Judgment is by virtue of the provisions of Sub-sections 6, 7 and 8 of Section 78 of the Income Tax Ordinance (Chapter 242) deemed to be a Final Judgment of Your
20 Lordships' Court in a civil action and the matter in dispute on the appeal is deemed to be of the value of five thousand rupees. The question involved in the appeal is one which, by reason of its great and general or public importance or otherwise ought to be submitted to Her Majesty the Queen-in-Council for decision.

4. That notice of the intended application for Conditional Leave to Appeal to Her Majesty the Queen-in-Council was given to the Assessee-Appellant-Respondent in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance on the 20th day of December, 1969 by serving the said notice on the Assessee-
30 Appellant-Respondent by personal service and on the 21st day of December, 1969 by sending the said notice by Express Registered Post and Ordinary Post to the residential and official addresses of the Assessee-Appellant-Respondent of No. 91, McCarthy Road, Colombo 7 and Singer Sewing Machine Co. Ltd., 83, Chatham Street, Colombo 1, respectively. The said notice was also served

No. 7.
Application for
Conditional
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Council.
8.1.70—
(*contd.*)

on the Assessee-Appellant-Respondent's Proctor, Mr. C. Nachiketa on the 21st day of December, 1969 by personal service and by sending the said notice by Express Registered Post and Ordinary Post to his residential and official addresses.

WHEREFORE the Assessor-Respondent-Petitioner (Applicant for Conditional Leave) prays that Your Lordships' Court be pleased to grant the Assessor-Respondent-Petitioner Conditional Leave to Appeal against the said Order and/or Judgment of this Court pronounced on the 10th day of December, 1969 to Her Majesty the Queen-in-Council, for costs and for such other and further relief 10 in the premises as to Your Lordships' Court shall seem meet.

(Sgd.) S. C. O de LIVERA,
Proctor for Assessor-Respondent-Petitioner.

No. 8

**MINUTE OF ORDER GRANTING CONDITIONAL LEAVE TO APPEAL
TO THE PRIVY COUNCIL**

No. 8.
Minute of Order
granting Condi-
tional Leave
to Appeal to the
Privy Council—
9.2.70.

In the Supreme Court of the Island of Ceylon

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance (Cap. 100).

THE COMMISSIONER OF INLAND REVENUE, of

10 Colombo *Assessor-Respondent.*
Petitioner.

S. C. No. 3 of 1967
Income Tax Case
Stated-BRA 339

Vs.

J. M. Rajaratnam, of 83 Chatham Street,
Colombo 1. *Assessee-Appellant.*
Respondent.

20 S. C. Application
No. 5 of 1970
(Conditional Leave)

30 The application of the Commissioner of Inland Revenue, Colombo, for Conditional Leave to Appeal to Her Majesty the Queen in Council from the Judgment of the Supreme Court of the Island of Ceylon dated the 10th day of December, 1969 in S. C. No. 3 of 1967 Income Tax Case Stated-BRA 339, having been listed for hearing and determination before the Honourable Anthony Christopher Augustus Alles, Puisne Justice and the Honourable George Terrence Samerawickrame, Q. C., Puisne Justice, in the presence of S. Sivarasa, Esquire, Crown Counsel for the (Assessor-Respondent) Petitioner and S. Ambalavanar, Esquire, with M. Radhakrishnan, Esquire, Advocates for the (Assessee-Appellant) Respondent, order has been made by Their Lordships on the 9th day of February, 1970 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

No. 9.
Application for
Final Leave to
Appeal to the
Privy
Council—
18.2.70.

No. 9

**APPLICATION FOR FINAL LEAVE TO APPEAL TO THE
PRIVY COUNCIL**

In the Supreme Court of the Island of Ceylon

Case Stated for the opinion of the Honourable
The Supreme Court under the provisions
of Section 74 (now 78) of the Income Tax
Ordinance (Chapter 242) upon the appli-
cation of J. M. Rajaratnam.

J. M. Rajaratnam *Assessee-Appellant*
S. C. (Income Tax) Vs. 10
Appeal No. 3 of 1967.

The Commissioner of Inland Revenue
..... *Assessor-Respondent.*

and

S. C. Application
No. 5 of 1970.
(Conditional Leave)

In the matter of an Application for Final
Leave to Appeal to Her Majesty the
Queen-in-Council under the provisions of 20
the Privy Council (Appeals) Ordinance in
S. C. (Income Tax) Appeal No. 3 of 1967.

S. C. Application
No. 134 of 1970.
(Final Leave)

The Commissioner of Inland Revenue.... *Assessor-Respondent.*
Petitioner.
(Applicant for Final Leave)

Vs.

J. M. Rajaratnam *Assessee-Appellant.* 30
Respondent.

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 18th day of February, 1970.

The Petition of the Assessor-Respondent-Petitioner abovenamed
appearing by Solomon Christoffel Obeysekera de Livera, his Proctor,
states as follows :—

1. That the Assessor-Respondent-Petitioner obtained on the 9th
day of February, 1970, leave from this Honourable Court to appeal 40

to Her Majesty in Her Privy Council against the Order and/or Judgment of this Court pronounced on the 10th day of December, 1969, in Supreme Court (Income Tax) Appeal No. 3 of 1967.

No. 9.
Application for
Final Leave to
Appeal to the
Privy Council.
18.2.70—
(contd.)

2. That by virtue of the provisions of Section 78 (8) (c) of the Income Tax Ordinance (Chapter 242) the Assessor-Respondent-Petitioner on appeal to Her Majesty in Council is not required to make any deposit or pay any fee or furnish any security prescribed by or under the Appeals (Privy Council) Ordinance (Chapter 100) and that accordingly when leave was granted no conditions were
10 imposed under Rule 3 of the Rules contained in the Schedule to the Appeals (Privy Council) Ordinance (Chapter 100).

Wherefore the Assessor-Respondent-Petitioner prays that he be granted Final Leave to Appeal to Her Majesty in Her Privy Council against the said Order and /or Judgment of this Court pronounced on the 10th day of December, 1969, for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) S. C. O. DE LIVERA,
Proctor for Assessor-Respondent-Petitioner.

Settled by

(Sgd.) S. SIVARASA
Crown Counsel.

No. 10.
Minute of Order
granting Final
Leave to Appeal
to the Privy
Council—
3.5.70

No. 10

**MINUTE OF ORDER GRANTING FINAL LEAVE TO APPEAL
TO THE PRIVY COUNCIL**

In the Supreme Court of the Island of Ceylon

In the matter of an application for Final
Leave to Appeal to the Privy Council
under the Rules set out in the Schedule
to the Appeals (Privy Council), Ordinance
(Cap. 100).

S. C. No. 3 of 1967.
Income Tax Case
Stated-BRA 339

10

THE COMMISSIONER OF INLAND REVENUE

of Colombo *Assessor-Respondent.*
Petitioner.

S. C. Application
No. 5 of 1970.
(Conditional Leave)

Vs.

J. M. RAJARATNAM of 83, Chatham Street,
Colombo 1.

Assessee-Appellant.
Respondent.

20

S. C. Application
No. 134 of 1970.
(Final Leave)

The application of The Commissioner of Inland Revenue, Colombo, for Final Leave to Appeal to Her Majesty the Queen in Council from the Judgment of the Supreme Court of the Island of Ceylon dated the 10th day of December, 1969, in S.C. No. 3 of 1967 Income Tax Case Stated—BRA 339, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Chief Justice and the Honourable Victor Tennekoon, Q.C., Puisne Justice, in the presence of S. Sivarasa Esquire, Crown Counsel for the (Assessor-Respondent) Petitioner; and there being no appearance for the (Assessee-Appellant) Respondent, order has been made by Their Lordships on the 3rd day of May, 1970, allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

30

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

PART II—EXHIBITS

A 1

(Appellant's Document produced before the Deputy Commissioner of Inland Revenue)

DEED OF COVENANT
Covenant to pay an Annuity

A1.
 (Appellant's
 Document
 produced
 before the
 Deputy
 Commissioner
 of Inland
 Revenue)
 Deed of
 Covenant
 1. 2. 58

I, Jesuthasan Mylvaganam Rajaratnam of No. 30, Boswell Place, Colombo 6, in consideration of the natural love and affection I have for my brother Mylvaganam Paramanathan hereby covenant that for a period of seven years from the year ending 31st March, 1958 (being treated as the 1st year) or during the residue of my life, 10 whichever period shall be shorter, I will pay annually to the said Mylvaganam Paramanathan during his life the sum of Rs. 1,500/- (one thousand and five hundred rupees).

In witness whereof I have hereunto set my hand and seal this 1st day of February, 1958.

Signed, sealed and delivered by
 the abovenamed covenantor in the
 presence of :

1. (Sgd.) K. MUTHUCUMARU,
 10—46th Lane, Wellawatte.
- 20 2. (Sgd.)
 C. G. R., RATMALANA

A. 2
 (Appellant's
 Document
 produced
 before the
 Deputy
 Commissioner
 of Inland
 Revenue)
 Deed of
 Covenant
 1. 2. 58

A 2

(Appellant's Document produced before the Deputy Commissioner of Inland Revenue)

DEED OF COVENANT

Covenant to pay an Annuity -

I, Jesuthasan Mylvaganam Rajaratnam of No. 30, Boswell Place, Colombo 6, in consideration of the natural love and affection I have for my brother Mylvaganam Sathananthan hereby covenant that for a period of seven years from the year ending 31st March, 1958 (being treated as the 1st year) or during the residue of my life, whichever period shall be shorter, I will pay annually to the said Mylvaganam Sathananthan during his life the sum of Rs. 1,500/- (one thousand and five hundred rupees). 10

In witness whereof I have hereunto set my hand and seal this 1st day of February, 1958.

Signed, sealed and delivered
 by the abovenamed covenantor in
 the presence of :

1. (Sgd.) K. MUTHUCUMARU,
 10—46th Lane, Wellawatte.

2. (Sgd.)

C.G.R. RATMALANA

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