

~~C.H. 62.~~

26, 1952

No. 36 of 1951.

31465

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

UNIVERSITY OF LONDON W.C.1. 21 JUL 1953 INSTITUTE OF ADVANCED LEGAL STUDIES
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BETWEEN

THE GAMINI BUS COMPANY LIMITED . . . *Appellants*

AND

THE COMMISSIONER OF INCOME TAX,  
COLOMBO . . . . . *Respondent.*

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CASE FOR THE APPELLANTS

1. This is an Appeal against a decree of the Supreme Court of Ceylon, dated the 18th July, 1950, on a Case Stated by the Board of Review under the provisions of Section 74 of the Income Tax Ordinance. By their said decree the Supreme Court confirmed the decision of the said Board, dated the 25th May, 1949, whereby the said Board confirmed four assessments made on the Appellants by the Commissioner of Income Tax.

RECORD.  
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2. The Appellants started business on the 14th February, 1943, with forty buses which carried passengers for hire or reward on seven routes in and around Colombo.

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3. The principal issues for determination in this appeal are as follows :—

(A) Whether there was evidence or material on which the Board of Review could reject the Appellants' accounts and whether the Board was justified in rejecting the said accounts.

(B) Whether a document prepared by the Assessor, which purported to show the expenses taxes and profits of seven other bus companies all of which were unconnected with the Appellants, was wrongly admitted in evidence at the hearing of the appeal by the Commissioner of Income Tax.

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(c) Whether in making his order the Commissioner of Income Tax acted on material which was not properly in evidence at the hearing of the appeal by him.

4. The gross receipts of the Appellants from the 14th February, 1943, onwards and the profits as revealed in their accounts and as adjusted by them for the purposes of income tax were as follows :—

			Gross Receipt	Profits as in Accounts	Profit as adjusted by the Company for Income Tax.
			Rs.	Rs.	Rs.
p. 10, l. 33.	14. 2.43	31. 3.43	58,227	18,857	14,796
	14. 2.43	31. 1.44	487,187	34,912	38,439
	1. 2.44	31. 1.45	554,715	23,844	31,577
	1. 2.45	31. 1.46	708,054	24,086	31,672

p. 19, l. 29. 5. The Assessor did not accept the accounts furnished by the Appellants and made the following estimated assessments :—

Rs.175,000/- for 1943-1944 ;  
 Rs. 75,000/- increased to Rs.250,000/- for 1944-1945 ;  
 Rs.250,000/- for 1945-1946 ; and  
 Rs.275,000/- for 1946-1947.

6. The Appellants appealed against the said assessments to the Commissioner of Income Tax. The witnesses called before the Commissioner gave evidence *inter alia* as follows :—

pp. 1-2.

(A) T. Ebert Fernando, the Appellants' auditor, deposed that he had prepared the accounts furnished to the Department. The figure of gross receipts was taken from the Ledger. The entries in the Daily Accounts in the Ledger were posted from the Way Bills Register. He had checked the items in the Way Bills Register for the whole period. In cross-examination this witness said that he generally took about two months to audit. He did not check the carbon copies of tickets with the Way Bills or ask for carbon copies when Way Bills were produced. The earlier documents were checked by the Company's staff. If the Company introduced more than one Way Bill there was a possibility that some would escape detection and, if there was overloading and the Company decided to exclude receipts in respect of overloading, this too could not be detected. In answer to the Commissioner this witness said that the Way Bills were signed by the conductor, driver and several inspectors and therefore he did not check further.

p. 1, l. 24.

p. 2, l. 3.

p. 2, l. 36.

(B) Mr. S. de S. Jayasinghe, the Appellants' Managing Director, deposed that, at the commencement of the Appellants' business in 1943, paper was controlled and could be obtained only on permit. As supplies were insufficient they used duplicate ticket leaves for reprinting of tickets and for carbon copies of the correspondence papers. In fact they used carbon copies of ticket books for correspondence. Carbon copies of ticket books for 1943-44, 1944-45 and 1945-46 were not intact as the books were dismantled and tickets were reprinted. This witness went on to say :—

p. 3, l. 14.

“ It is not possible for a Conductor to prepare another Way Bill because the Conductors are not educated, education

10 is only up to 5th Standard, the Conductors have to load luggage and unload, they have to keep in mind where passengers get in and where they get down, change money, etc. He has no time to prepare another Way Bill. If we are putting up two Way Bills, it has to be done by means of conspiracy, if a system of issuing two Way Bills there was ample opportunity for information to have reached Department as there have been many trade disputes and several dismissals of employees. If Way Bill does not enter correct number of tickets it is the Conductors' work and not done in the office. The Inspector should be able to detect this. When the collection is brought it is the duty of the Cashier to check collection with ticket book. The Cashier should then detect it. If the wrong figures are entered it must be under a conspiracy. It is generally accepted that a good portion of the receipts is misappropriated by the Conductor and Driver, i.e., by collecting ticket fare and not issuing tickets. We have a file for every Conductor and Driver and on complaints appropriate action is taken. There are a number of such cases."

20 In answer to the Commissioner this witness said that the Appellants' services were rural services and not through developed areas and they did not have central markets and colleges or courts. Only in the mornings and evenings were the buses crowded. p. 4, l. 33.

(c) G. A. de Silva, the Appellants' Book-keeper, was tendered by the Appellants' Counsel for examination by the Assessor. In answer to the Commissioner he said that certain Way Bills showed "NT" in the place of ticket numbers. This entry was made where no ticket books were available owing to the delay of the printers but although there were no ticket numbers moneys had been received and entered. p. 4, l. 39.

30 7. The arguments addressed to the Commissioner were recorded by him as follows :—

"Arguments on behalf of the Appellant.—The gross receipts as shown in the accounts should be accepted as these gross receipts have been fully checked with Way Bills. However, the case is one for an estimated assessment on the basis of gross receipts as in the accounts, as it is possible that expenses charged by the Company in the accounts cannot be allowed." p. 10, l. 7.

40 "Argument by the Assessor.—The gross receipts are generally under-stated in the case of bus companies. The audit is an unsatisfactory audit, as carbon copies have not been checked. The case is one for an estimated assessment in reference to the petrol and oil consumed as that is an item that is provable and there is invariably in the case of bus companies a relation between this item and gross receipts and profit."

8. The Commissioner's determination was as follows :—

p. 10, l. 19.

(1) The assessment of Rs.175,000 made for the year 1943-44 is confirmed, i.e., the profits of one year from 14th February, 1943.

(2) The assessment for 1945-46, based on the accounts of the year ended 31st January, 1945, is reduced to Rs.190,000.

(3) The assessment for 1946-47, based on the accounts of the year ended 31st January, 1946, is reduced to Rs.230,000.

(4) The assessment for 1944-45 will be reduced on the basis of the above figures.

The Commissioner gave the following reasons for his said determination :—

p. 11, l. 1.

(A) On the figures supplied by the Appellants themselves the accounts must be rejected since, in their first one and a half 10 months, they had been able to make a profit of Rs.14,796, but for no other period had they been able to keep to that rate of profit ; whereas it was generally known that bus companies reaped a golden harvest between 1943 and 1946.

p. 11, l. 12.

(B) In his opinion it was " up to the Appellants to have made every endeavour to produce for the Assessor's satisfaction at least the carbon copies of one month so that he would be satisfied that the Way Bills and the Way Bill Register were a complete record of the gross takings." Mr. Ebert Fernando the Appellants' Accountant, had been made aware of the fact that the checking of the gross 20 receipts with the carbon copies of the tickets was an important matter. It had also to be noticed that if ticket books were dismantled from the book form in order to print fresh tickets owing to the shortage of paper, as testified by the Managing Director, then one out of every four copies should remain with the Appellants.

p. 11, l. 37.

(C) On the basis of Exhibit R12 (i.e., the computation made in the case of another bus company by a firm of Chartered Accountants) it appeared that even if one month had been checked it would have been possible to see the variation between the carbon copies of the ticket books and the Way Bills Register and arrive 30 at a possible figure of gross receipts.

(D) After referring to the expenditures on petrol and engine oil the Commissioner said :—

p. 12, l. 25.

" The Assessor is prepared to accept this expenditure as debited in accounts. He has also prepared a statement (R14) wherein is shown the relationship between ' petrol and oil ' expenses and gross receipts and also nett profits as assessed for Income Tax. (I am satisfied that these figures are produced accurately from office files of tax payers.) There is no doubt as urged by the Appellant, that one bus company differs from 40 another bus company in the matter of its profits but it has to be remembered that the traffic in the years under consideration was waiting there to be moved, wages were standardized and fares were fixed by the Commissioner of Motor Transport on a standard basis. Thus, the variation in profit has to be within small limits and not a variation so conspicuously large as in this case, as revealed by R14, and even by its own accounts, comparing the first one and a half months with the other periods,

as indicated in paragraph (1) of this determination. However, in determining the nett profits to be assessed on this Company, I have taken into consideration the fact urged by the Appellant that the situation of the garages of the Company brought about a certain amount of unproductive mileage and I have also taken into consideration the evidence of Mr. Jayasinghe, the Managing Director, when he said—

10           ‘ Our services are rural services and not through developed areas, and we do not have central markets and colleges or schools. Only in the mornings and evenings the buses are crowded ’

subject to what is commonly known that the rural areas in this case are fairly well-populated areas, and adopted for the purposes of this determination a lower rate than the rate of profit as assessed and agreed in the cases of certain other bus companies as shown in the statement R14.”

9. On the 25th October 1948 the Appellants lodged a Notice of Appeal to the Board of Review against the Commissioner’s said decision setting out the following grounds of appeal :—

20           “ (A) The decision of the Commissioner is contrary to law p. 13, l. 35. and is against the weight of evidence laid before him.

(B) The Commissioner was wrong in rejecting the gross takings of the Appellant Company as returned by it for the accounting years ending 31st January, 1944, 31st January, 1945, and 31st January, 1946.

(C) The Commissioner was wrong in estimating the profits of the Appellant based upon the petrol and oil expenditure without having regard to the gross takings of the Appellant.

(D) The assessments appealed against are excessive.

30           (E) The Commissioner has misdirected himself by taking into consideration the profits returned by the Appellant for the period 14th February, 1943 to 31st March, 1943, without calling upon the Appellant for an explanation. It is submitted that an examination of the accounts of the said period will clearly show why the Appellant was able to return a profit of Rs.18,857 upon a gross taking of Rs.58,227.

40           (F) The Commissioner was clearly wrong in acting on the statement R14 produced by the Assessor without giving the Appellant an opportunity of examining the files from which the said statement is alleged to have been prepared.

(G) The Commissioner was wrong in taking into consideration the document R12 produced by the Assessor as it has no relevance whatsoever to the matters under appeal.”

10. The decision of the Board of Review contained the following passages :—

“ The case for the Income Tax Department is that experience p. 16, l. 39. has established a relation between the gross receipts and profits of

bus companies and the expenditure on oil and petrol, and that by this test the profits of the Appellant are grossly understated. A statement relating to seven other bus companies which are not named owing to the secrecy provisions of the Ordinance, has been prepared and produced by the Assessor marked R14. In the case of one of these companies where the audited accounts had not been checked further back than the Way Bills, the Assessor stated, and Mr. Ebert Fernando, who was the Accountant for that company too agreed, that estimated assessments of Rs.190,000 and Rs.175,000 were made against returns respectively of Rs.21,584 and Rs.15,602 and appeals against the estimated assessments were withdrawn." 10

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p. 17, l. 15.

" The most careful consideration has been given by the Board to the case put forward by Mr. Weerasooriya and the Board has come to the conclusion that the onus cast on the Appellant under section 73 (4) of the Ordinance has not been discharged. The Board considers that the Appellant's accounts are unreliable, as they were not checked with the most important vouching material, viz. the carbon copies of tickets, and rejects the accounts. In the opinion of the Board, the considerations which the Assessor took into account when he made the assessments are relevant and he has not in any way acted capriciously." 20

p. 18.

11. On the 8th June, 1949, the Appellants lodged an application under Section 74 of the Income Tax Ordinance requiring the Board to state a Case for the opinion of the Supreme Court on the following points of law :—

" (A) The Commissioner and the Board of Review wrongly reject the accounts submitted by the Assessee there being no evidence whatsoever before the Commissioner at the inquiry to support his rejection of the said accounts.

(B) The Commissioner acted wrongly, unlawfully and improperly in admitting in evidence the document R14 without providing the Assessee with an opportunity of verifying or testing the accuracy of the material contained in the said document or of testing the conclusions drawn from the material contained in the document R14. 30

(c) There was no material for the rejection of the accounts of the Assessee as there was no evidence before the Commissioner or the Board of Review that the said accounts were false, inaccurate or unreliable.

(D) The Commissioner who is vested with judicial powers in regard to the hearing of appeals under this Ordinance acted contrary to the principles of natural justice when he imported into the hearing of this appeal material and information which was not in evidence at this appeal. The Assessee had no opportunity of verifying or testing the correctness of this information and material as no evidence was placed before the Commissioner on these matters but 40

nevertheless the Commissioner felt that he was justified in acting upon it. The Board of Review has upheld the decision of the Commissioner in so acting.

(E) The Assessor acted arbitrarily and capriciously in making the assessments against the Assessee."

12. On the 1st October 1949 the Board of Review stated a Case which did not include any of the aforesaid points of law but which contained the following paragraph :—

10 " 11. The Appellant is dissatisfied with the decision of the Board of Review and has requested the Board to state a case for the opinion of the Honourable the Supreme Court on the questions of law arising in this appeal. p. 21, l. 26.

It is submitted that, if any question of law does arise the question is whether there was any evidence on which the Board of Review, having rejected the Appellant's accounts, could have varied or reversed the determination of the Commissioner of Income Tax."

13. On the 31st January 1950 the Supreme Court (Windham and Gunasekara, JJ.) acting pursuant to Section 74 (4) of the Income Tax Ordinance, sent the stated case back for amendment by the embodiment of the first four points of law formulated by the Appellants in paragraphs A to D inclusive of their aforesaid application to the Board dated the 14th October 1949. The stated case was accordingly amended on the 29th April 1950 by the deletion of paragraph 11 and the substitution of the following paragraph :—

20 " 11. The Appellant is dissatisfied with the decision of the Board of Review and has requested the Board to state a case for the opinion of the Honourable the Supreme Court on the questions of law arising on this appeal, which are :— p. 23, l. 28.

30 (A) (1) Was there evidence or material on which the Board could reject the Appellant's accounts and (2) was the Board justified in rejecting the said accounts ?

(B) Was the Document R14 wrongly admitted in evidence at the hearing of the appeal by the Commissioner of Income Tax ?

(C) In making his order did the Commissioner of Income Tax act on material which was not properly in evidence at the hearing of the appeal by him ?

(D) By the insertion between the word ' Commissioner ' and the word ' are ' in paragraph 12 of the following words— ' and a true copy of the order made by the Commissioner.' "

40 14. The principal judgment in the Supreme Court was delivered by Dias, J., who held *inter alia* that it was a matter of common knowledge that from 1942 onwards petrol was strictly rationed and all forms of transport, in particular transport by private motor cars and the railway, had become exceedingly difficult, with the result that bus companies reaped a " golden harvest." It was therefore not surprising that the pp. 24-33.

Assessor when he scrutinised the return sent in by the Assessee had good reason to suspect their *bona fides*. The learned judge then proceeded as follows :—

p. 25, l. 29.

“ The situation which emerges under such a situation was fully dealt with in the recent case of *Guillain v. Commissioner of Income Tax*. Under section 64 (2) (b), if the Assessor does not accept a return, he is entitled to ‘ estimate the amount of the assessable income of such person and assess him accordingly.’ Section 90 (3) provides that ‘ in cases where income profits and gains liable to tax *cannot be definitely ascertained*,’ rules may be made to 10  
‘ prescribe methods by which *an estimate* of such income may be made and the proportions thereof liable to tax.’ We have been informed that no such rules have been prescribed for the class of case we are here dealing with.”

p. 27, l. 8.

As regards the Appellants’ reasons for the non-production of the ticket books the learned judge held that they did not bear scrutiny. His judgment included the following passage :—

p. 27, l. 21.

“ It is also to be noted that while in July the Department was told that the ticket books were being sent to the Department, in September, it is stated that the documents were ‘ not taken care of,’ 20  
i.e., they were lost. Eight months later, namely, on May 5th, 1948, the Managing Director giving evidence stated to the Commissioner of Income Tax at the enquiry : ‘ At the commencement of the business in 1943, paper was controlled and paper was obtained only on a permit . . . So paper was insufficient. Therefore, we used the duplicate ticket leaves for reprinting of tickets.’ Two tribunals have disbelieved the Assessee’s reason for the non-production of the books of tickets. It is unnecessary for this Court to make further comment on a question of fact.”

As regards the Case Stated in its amended form the learned judge said :— 30

p. 28, l. 39.

“ While the Board of Review consists of laymen, section 70 provides that it is to have a Clerk and a Legal Adviser. One presumes that before the Board settles the form of a case stated to be sent to the Supreme Court, it would be submitted for consideration by a legal adviser to the Board. The facts of this case seem to show that the Board either acted without legal advice or that it was ill-served by its legal adviser. Even after this Court indicated how the case stated was to be amended, the Board did not embody the questions as formulated by the Assessee.”

With reference to Exhibit R14 the learned Judge said :—

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p. 32, l. 11.

“ Unlike under the Indian Act, our Income Tax Officers do not function as a Court of Law. Unlike under the English Law our Income Tax Officers are not expressly required to act on ‘ lawful evidence.’ Having regard to the language used in sections 69 and 73 (7) of the Income Tax Ordinance, I am of opinion that in a case like the present, where the returns of the Assessee are open to suspicion, and where an estimated assessment, therefore, had to be made, the legislature did not intend that the



10 proceedings before the Commissioner of Income Tax should be governed by the strict rules of evidence observed in a Court of Law. Provided the procedure adopted is fair and in accordance with the principles of fair play and natural justice (see hereon *de Mel v. de Silva*) a document like R14 would not, in my view, be inadmissible. After all, there can be no prejudice to an Assessee who could refute the accuracy of the estimated assessment either by the production of his correct accounts, or by calling witnesses from other bus companies to prove that at the material dates the gross receipts were much less than as stated in the estimated assessment. I am, therefore, of the view that R14 was a document which could be relied on, and was properly relied on, in this investigation."

The learned Judge therefore answered the questions submitted in the Case Stated as follows :—

" (A) (i) There was evidence and material on which the Board p. 33, l. 9. could reject the Appellant's accounts ; (ii) The Board was justified in rejecting the Appellant's Accounts.

20 (B) R14 was not wrongly admitted in evidence in the circumstances of this case.

(C) In making his order the Commissioner of Income Tax was acting on material which was properly in evidence at the hearing of the appeal by him."

He therefore confirmed the assessment as determined by the Board of Review with costs. Swan J. agreed. A decree was passed accordingly. p. 33, l. 18.  
p. 33, l. 20.  
p. 33, l. 30.

15. The Appellants, being aggrieved by the said judgment and decree of the Supreme Court applied to the said Court for leave to appeal to His Majesty in Council. Conditional leave was granted on the 23rd August, 1950, and final leave on the 12th October 1950. p. 34, l. 15.  
p. 35, l. 18.  
p. 38, l. 10.

30 16. The Appellants respectfully submit that this appeal should be allowed with costs here and below for the following among other

## REASONS

(1) Because there was no evidence before the Commissioner and the Board of Review which entitled them to reject the Appellants' accounts.

40 (2) Because the Commissioner's determination and the decision of the Board of Review were wholly or partly based upon the evidence or material contained in the document R14 which was wholly inadmissible and irrelevant.

(3) Because the Appellants had no opportunity to verify or test the accuracy of the material contained in the said document.

- (4) Because the admission in evidence of the said document and the reliance placed thereon by the Commissioner and the Board of Review were contrary to natural justice.
- (5) Because the Commissioner's determination was partly based on the document R12 which was also inadmissible and irrelevant and the accuracy of which the Appellants had no opportunity of testing, and because the admission of this document and the Commissioner's reliance thereon were contrary to natural justice. 10
- (6) Because the learned Judges of the Supreme Court were wrong in directing themselves that the Commissioner of Income Tax was entitled to arrive at his decisions on other than lawful evidence.
- (7) Because the Commissioner and the Board of Review erred in relying upon the profits returned by the Appellants for the period of 14th February 1943 to 31st March 1943 without calling on the Appellants for an explanation.
- (8) Because the Board of Review failed to comply with 20 the Order of the Supreme Court, dated 31st January 1950, that they should embody in the case stated four points raised by the Appellants and because the Supreme Court proceeded to adjudicate upon the case stated in spite of the Board's said failure to comply with their said Order.
- (9) Because the decree of the Supreme Court is wrong and should be set aside.

DINGLE FOOT.

G. B. KUMARAKULASINGHE. 30

## ANNEXURE.

## INCOME TAX ORDINANCE.

\* \* \* \* \*

3.—(1) (a) There shall be a Board of Income Tax composed of the Minister and two Members of Parliament appointed by the Minister. Administration.  
A Member so appointed shall hold office as long as he remains a Member of Parliament, unless he shall resign or be removed from office by the Minister.

(b) Two members of the Board of Income Tax shall form a quorum for the transaction of business and when the Minister is present he shall  
10 be the Chairman.

(c) All matters coming before the Board of Income Tax shall be decided by a majority of votes, and in the case of an equality of votes the Chairman or presiding member shall have a second or a casting vote.

(2) For the purposes of this Ordinance, there may be appointed a Commissioner, a Deputy Commissioner, Assistant Commissioners, and Assessors.

(3) An Assistant Commissioner exercising or performing any power, duty or function of the Commissioner under this Ordinance shall be deemed for all purposes to be authorised to exercise or perform the same until the  
20 contrary is proved.

(4) Any powers conferred upon an Assessor by this Ordinance may be exercised by an Assistant Commissioner.

4.—(1) Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any person to carry out the provisions of this Ordinance shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not  
30 communicate any such matter to any person other than the person to whom such matter relates or his authorised representative, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner.

(2) Every person appointed under or employed in carrying out the provisions of this Ordinance shall before acting under this Ordinance take and subscribe before a Justice of the Peace an oath of secrecy in the prescribed form.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document, or assessment, or to divulge or communicate to any  
40 court any matter or thing coming under his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.

(4) Notwithstanding anything contained in this section, the Commissioner or any officer of the Income Tax Department authorised by the Commissioner in that behalf may communicate any matter which comes to his knowledge—

- (a) to the Commissioner of Stamps, or to the Commissioner of Estate Duty, or
- (b) to the Income Tax Authority of any part of His Majesty's dominions or of any place under His Majesty's protection or suzerainty to such an extent as the Commissioner may deem necessary to enable the correct relief to be given from income tax in that part or place in respect of the payment of income tax in Ceylon. 10

(5) Notwithstanding anything contained in this section, the Commissioner may permit the Auditor-General or any officer of the Department of the Auditor-General duly authorised by him in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor-General or any officer authorised by him under this subsection shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of subsection (2). 20

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Assessor to make assessments.

64.—(1) Every person who is in the opinion of an Assessor chargeable with tax shall be assessed by him as soon as may be after the expiration of the time limited by the notice requiring him to furnish a return of income under section 54 (1) :

Provided that the Assessor may assess any person at any time if he is of opinion that such person is about to leave Ceylon, or that for any other reason it is expedient to do so.

(2) Where a person has furnished a return of income, the Assessor may either—

- (a) accept the return and make an assessment accordingly or 30
- (b) if he does not accept the return, estimate the amount of the assessable income of such person and assess him accordingly.

(3) Where a person has not furnished a return of income and the Assessor is of the opinion that such person is chargeable with tax, he may estimate the amount of the assessable income of such person and assess him accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return.

Additional assessments.

65. Where it appears to an Assessor that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the Assessor may, within the year of assessment or within three years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed, and the provisions 40

of this Ordinance as to notice of assessment, appeal, and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder :

Provided that, where the non-assessment or under assessment of any person for any year of assessment is due to fraud or wilful evasion, such assessment or additional assessment may be made at any time within ten years after the expiration of that year of assessment.

66. Every Assessor shall from time to time submit his assessments to an Assistant Commissioner, who shall scrutinise and amend the same  
10 as may appear necessary. When the Assistant Commissioner is satisfied that the assessments as made or amended charge the persons to whom they relate with the full tax with which they ought to be charged, he shall sign and allow them.

67.—(1) An Assistant Commissioner shall give notice of assessment to each person who has been assessed stating the amount of income assessed and the amount of tax charged.

(2) Where by reason of an amendment of the law of an amendment of the unit rate under section 20 (II) it is necessary to vary the amount of tax charged in any notice of assessment, the Assistant Commissioner may  
20 give such notification as may be necessary to the person assessed in that notice of assessment ; and any notification so given shall, as regards any particulars of the assessment contained in the notification which have not been included in the notice of assessment, have effect as if the notification were a notice of assessment.

\* \* \* \* \*

69.—(1) Any person aggrieved by the amount of an assessment made under this Ordinance may within twenty-one days from the date of the notice of such assessment appeal to the Commissioner by notice of objection in writing to review and revise such assessment. Any person so appealing (hereinafter referred to as the Appellant) shall state precisely  
30 in his notice the grounds of his objection and the notice shall not be valid unless it contains such grounds and is made within the period above mentioned :

Procedure on  
appeals to the  
Commissioner.

Provided that the Commissioner, upon being satisfied that owing to  
absence from Ceylon, sickness, or other reasonable cause the Appellant was prevented from giving notice of objection within such period, shall grant an extension thereof :

Provided further that, where the assessment appealed against has been made in the absence of a return of income by the Appellant, no notice of objection shall be valid unless and until such return has been  
40 duly made.

(2) On receipt of a valid notice of objection under subsection (1), the Commissioner may cause further inquiry to be made by an Assessor, and if in the course of such inquiry an agreement is reached as to the amount at which the Appellant is liable to be assessed, any necessary adjustment of the assessment shall be made.

(3) Where no agreement is reached between the Appellant and the Assessor in the manner provided in subsection (2), the Commissioner shall, subject to the provisions of section 72, fix a time and place for the hearing of the appeal.

(4) Every Appellant shall attend before the Commissioner at the time and place fixed for the hearing of the appeal. The Appellant may attend the hearing of the appeal in person or by an authorised representative. The Commissioner may, if he thinks fit, from time to time adjourn the hearing of an appeal for such time and place as he may fix for the purpose. In any case in which an authorised representative attends on behalf of the Appellant, the Commissioner may adjourn the hearing of the appeal and may, if he considers that the personal attendance of the Appellant is necessary for the determination of the appeal, require that the Appellant shall attend in person at the time and place fixed for the adjourned hearing of the appeal. If the Appellant or his authorised representative fails to attend at the time and place fixed for the hearing or any adjourned hearing of the appeal, or if the Appellant fails to attend in person when required so to attend by the Commissioner, the Commissioner may dismiss the appeal :

Provided that if the Appellant shall within a reasonable time after the dismissal of an appeal satisfy the Commissioner that he or his representative was prevented from due attendance at the hearing or at any adjourned hearing of such appeal by absence from Ceylon, sickness, or other unavoidable cause, the Commissioner may vacate the order of dismissal and fix a time and place for the hearing of the appeal.

(5) The Commissioner shall have power to summon any person whom he may consider able to give evidence respecting the appeal to attend before him at the hearing and may examine such person on oath or otherwise. Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by such person in so attending.

(6) In disposing of an appeal the Commissioner may confirm, reduce, increase, or annul the assessment, and shall record his determination in writing and announce it orally.

(7) Where the Commissioner authorises an Assistant Commissioner to hear appeals, such authority shall not empower such Assistant Commissioner to hear an appeal against an assessment which he has himself signed and allowed or against a penalty which he has himself imposed.

Constitution of the  
Board of Review.

70.—(1) For the purpose of hearing appeals in the manner hereinafter provided, there shall be a Board of Review (hereinafter referred to as the Board) consisting of not more than twenty members who shall be appointed from time to time by the Governor. The members of the Board shall hold office for a term of three years but shall be eligible for reappointment.

(2) There shall be a Clerk to the Board who shall be appointed by the Governor.

(3) There shall be a Legal Adviser to the Board who shall be appointed by the Board.

(4) Three or more members of the Board shall be nominated by the Financial Secretary and summoned by the Clerk to attend meetings at which appeals are to be heard. At such a meeting a quorum shall consist of two members.

(5) At the request of the Commissioner, the Clerk to the Board shall summon a meeting of the whole Board. At such a meeting a quorum shall consist of five members.

(6) The remuneration of the members of the Board, the Clerk, and the Legal Adviser shall be fixed by the Governor.

10 71.—(1) Any appellant, or the authorised representative of any appellant, who is dissatisfied with the determination by the Commissioner of an appeal under section 69 may declare his dissatisfaction with that determination. Such declaration shall be made orally immediately after the announcement by the Commissioner of his determination or shall be communicated in writing to the Commissioner within one week from the date of such announcement. Right of appeal to the Board of Review.

(2) Where the appellant has declared or communicated his dissatisfaction in accordance with subsection (1), the Commissioner shall, within one month of the determination of the appeal, transmit in writing to the appellant or his authorised representative his determination and reasons therefor. 20

(3) Within one month of the transmission of such written determination and reasons by the Commissioner, the appellant may give notice of appeal to the Board. Such notice shall not be entertained unless it is given in writing to the Clerk to the Board and is accompanied by a copy of the Commissioner's written determination, together with a statement of the grounds of appeal therefrom.

(4) Save with the consent of the Board and on such terms as the Board may determine the appellant may not at the hearing by the Board rely on any grounds of appeal other than the grounds stated in accordance with subsection (3), and may not adduce any evidence other than evidence adduced at the hearing of the appeal before the Commissioner. 30

72. Notwithstanding the provisions of section 69, where the Commissioner is of opinion that no useful purpose would be served by his hearing an appeal, he may refer it to the Board of Review, and the Board shall hear and determine such appeal and the provisions of section 73 shall apply accordingly. Commissioner may refer appeals to the Board of Review.

73.—(1) As soon as may be after the receipt of a notice of appeal, the Clerk to the Board shall fix a time and place for the hearing of the appeal, and shall give fourteen clear days' notice thereof both to the appellant and to the Commissioner. Hearing and disposal of appeal to the Board of Review. 40

(2) Every appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorised representative :

Provided always that the Board may postpone the hearing of the appeal for such time as it thinks necessary for the attendance of the appellant.

(3) The Assessor who made the assessment appealed against or some other person authorised by the Commissioner shall attend such meeting of the Board in support of the assessment.

(4) The onus of proving that the assessment as determined by the Commissioner on appeal, or as referred by him under section 72, as the case may be, is excessive shall be on the appellant.

(5) All appeals shall be heard in camera.

(6) The Board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. 10  
Any person so attending may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.

(7) At the hearing of the appeal the Board may, subject to the provision of section 71 (4), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance, relating to the admissibility of evidence shall not apply.

(8) After hearing the appeal, the Board shall confirm, reduce, increase, or annul the assessment as determined by the Commissioner on appeal, or as referred by him under section 72, as the case may be, or may remit the case to the Commissioner with the opinion of the Board thereon. Where 20  
a case is so remitted by the Board, the Commissioner shall revise the assessment as the opinion of the Board may require.

(9) Where under subsection (8) the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding one hundred rupees, which shall be added to the tax charged and recovered therewith.

74.—(1) The decision of the Board shall be final :

Provided that either the appellant or the Commissioner may make an application requiring the Board to state a case on a question of law for the opinion of the Supreme Court. Such application shall not be entertained 30  
unless it is made in writing and delivered to the Clerk to the Board, together with a fee of fifty rupees, within one month of the date of the Board's decision. If the decision of the Board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him.

(2) The stated case shall set forth the facts and the decision of the Board, and the party requiring it shall transmit the case, when stated and signed, to the Supreme Court within fourteen days after receiving the 40  
same.

(3) At or before the time when he transmits the stated case to the Supreme Court, the party requiring it shall send to the other party notice in writing of the fact that the case has been stated on his application and shall supply him with a copy of the stated case.

(4) Any two or more Judges of the Supreme Court may cause a stated case to be sent back for amendment and thereupon the case shall be amended accordingly.



(5) Any two or more Judges of the Supreme Court shall hear and determine any question of law arising on the stated case and may in accordance with the decision of the court upon such question confirm, reduce, increase, or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the court thereon. Where a case is so remitted by the court, the Board shall revise the assessment as the opinion of the court may require.

(6) In any proceedings before the Supreme Court under this section, the court may make such order in regard to costs in the Supreme Court and in regard to the sum paid under subsection (1) as to the court may seem fit.

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90.—(1) The Board of Income Tax may from time to time make rules generally for carrying out the provisions of this Ordinance and for the ascertainment and determination of any class of income. Power to make rules.

(2) Without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—
- (i) insurance companies,
  - (ii) non-resident companies ;
- (b) prescribe the procedure to be followed on application for refunds and reliefs ;
- (c) provide for any matter which by this Ordinance is to be or may be prescribed.

(3) In cases where income, profits and gains liable to tax cannot be definitely ascertained the rules may prescribe methods by which an estimate of such income may be made and the proportion thereof liable to tax.

(4) All rules made under this section shall come into operation on publication in the Gazette, or at such other time as may be stated in such rules.

(5) Such rules may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding in each case a sum of five hundred rupees.

(6) All such rules shall be laid, as soon as conveniently may be, on the table of the State Council at two successive meetings of the Council, and shall be brought before the Council at the next subsequent meeting held thereafter by a motion that the said rules shall not be disapproved, and if upon the introduction of any such motion, or upon any adjournment thereof, the said rules are disapproved by the Council, such rules shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything already done thereunder ; and such rules, if not so disapproved, shall continue to be of full force and effect. Every such disapproval shall be published in the Gazette.

In the Privy Council.

ON APPEAL FROM THE SUPREME  
COURT OF CEYLON.

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BETWEEN

THE GAMINI BUS COMPANY  
LIMITED - - - *Appellants*

AND

THE COMMISSIONER OF  
INCOME TAX, COLOMBO *Respondent*

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CASE FOR THE APPELLANTS.

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T. L. WILSON & CO.,  
6 Westminster Palace Gardens,  
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