

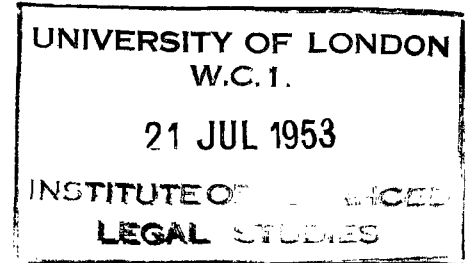
~~CLT 62~~

31466

In the Privy Council.

No. 36 of 1951.

ON APPEAL FROM THE SUPREME
COURT OF CEYLON



BETWEEN

THE GAMINI BUS COMPANY LIMITED (A Company
duly incorporated under the Companies Ordinance and
having its Registered office at Pepiliyana, Negegoda) APPELLANT

AND

THE COMMISSIONER OF INCOME TAX, COLOMBO RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment of the Supreme Court of Ceylon, p. 24
 dated the 18th July, 1950, confirming assessments as determined by the
 Income Tax Board of Review on an Appeal by the Appellant by way of a p. 19
 Case Stated from a decision of the Income Tax Board of Review dated the p. 14, l. 23
 25th May, 1949, whereby on an appeal by the Appellant from a determina- p. 13, l. 21
 tion of the Respondent dated the 29th September, 1948, the determina- p. 5, l. 30
 tion of the Respondent was confirmed.

2.—The Appeal relates to the amounts at which the Appellant Company
 is liable to be assessed to income tax under the Income Tax Ordinance of
 10 Ceylon for the fiscal years concerned, in respect of income, derived from its
 business, which is that of carrying passengers in road vehicles. (Throughout
 the proceedings below the expression "Bus Company" has been used to
 describe the nature of the Appellant's concern and the word "Bus" has
 been used to describe the vehicles employed, and this phraseology is used
 herein also.) The ultimate questions for decision are whether, having regard
 to the statutory provisions hereinafter set out the Assessor was entitled to
 reject the returns of its income which were made by the Appellant, and to
 estimate the amount of its income by reference to, among other matters,
 20 other bus companies, which were not identified by name to the Appellant.
 and to assess the Appellant by reference to the estimates so made; further,

RECORD

whether the Respondent and the Board of Review, in hearing and determining appeals against assessments so made by the Assessor, were entitled to uphold his rejection of the returns and, in relation to the amounts of the assessments, whether the Board were entitled to take into consideration particulars of the returns so made by the said unidentified bus companies.

The matter depends upon the construction of those provisions of the Ordinance which deal with the making of assessments by the Assessor and with the hearing of, and the evidence admissible at, appeals therefrom to the Respondent and from him to the Income Tax Board of Review.

3.—Income tax is imposed in Ceylon by the Income Tax Ordinance, Chapter 188 of 1932, as amended by later Ordinances. 10

By Section 4 (1) of the Ordinance it is provided that all persons appointed to carry out its provisions shall preserve secrecy in relation to the affairs of any person that may come to their knowledge in the performance of their duties thereunder, and shall not suffer any person to have access to any records in the possession, custody or control of the Respondent.

By Section 54 (2) of the Ordinance it is provided that every person chargeable with tax should make a return of his incomes.

By Section 64 (2) it is provided that where a person has furnished a return of income the Assessor may either accept the return and make an assessment accordingly or, if he does not accept the return, estimate the amount of the assessable income of such person and assess him accordingly. 20

Section 69 of the Ordinance gives a person a right of appeal to the Respondent against the assessment, and Section 71 gives him a right of appeal from the determination of the Respondent to the Board of Review.

By Section 73 (4) of the Ordinance it is provided that on an appeal to the Board of Review the onus of proving that the assessment as determined by the Respondent on Appeal is excessive shall be on the Appellant.

By Section 73 (7) of the Ordinance it is provided that at the hearing of an appeal the Board of Review may, subject to the provisions of Section 71 (4) (which *inter alia* limits the power of the Appellant to adduce fresh evidence) 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. 30

By Section 74 the Appellant may appeal to the Supreme Court on any question of law, by way of a Case Stated for the opinion of the Court.

p. 19

4.—The facts of the case appear from the Case so stated by the Board of Review, and the documents exhibited thereto, and are summarised below.

The Appellant is a bus company which commenced business on the 14th February, 1943, with 40 buses plying on routes between Colombo and 40

seven other places up to 25 miles away. For the period of 46 days from the 14th February, 1943, to 31st March, 1943, the Appellant made a return to the Assessor showing an adjusted profit of Rs. 14,796, on which sum it was assessed to income tax for the year 1942/43. RECORD
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For the next four years of assessment the adjusted profits returned by the Appellant were :— p. 19, l. 23

10	1943/44	Rs. 38,439.00
	1944/45	Rs. 31,577.82
	1945/46	Rs. 28,578.92
	1946/47	Rs. 31,672.00

5.—The Assessor did not accept the returns so made by the Appellant and made the following estimated assessments :— p. 19, l. 29

1943/44	Rs. 175,000.00
1944/45	Rs. 75,000.00
(later increased to	Rs. 250,000.00)
1945/46	Rs. 250,000.00
1946/47	Rs. 275,000.00

6.—The Appellant appealed to the Respondent under Section 69 of the Income Tax Ordinance and the Respondent determined the assessments as follows :— p. 20, l. 1
p. 20, l. 4

1943/44	Rs. 175,000.00
1944/45	Rs. 176,824.00
1945/46	Rs. 190,000.00
1946/47	Rs. 230,000.00

7.—For the purpose of that appeal the Respondent had before him the documents relating to the business and accounts of the Appellant and the computations relating to the profit and expenses of various other bus companies referred to in his written determination. p. 28, l. 30

The Respondent held that, upon the facts before him, the Appellant's accounts (upon which the returns were based) must be rejected. He observed that the profits returned by the Appellant for the first one-and-a-half months of the business, namely, Rs. 14,796, when compared with the figures of profit shown for later periods alone warranted such rejection, it being a matter of general knowledge that between 1943 and 1946 "bus companies reaped a golden harvest." As a further reason for such rejection, the Respondent referred to the absence of carbon copies of ticket books which were very important documents in the Appellant's accounting system, and which the Appellant's Accountant knew to be so regarded by the Assessor. p. 11, l. 1

40 The Respondent therefore determined that it was necessary to estimate the profits on the basis of available information which could be proved and p. 12, l. 18

RECORD — tested. The Appellant's expenditure on petrol and engine oil being agreed by the Assessor and the conditions under which bus companies operated during the relevant years being largely standardised, the Respondent decided that the relationship between expenditure on petrol and oil and gross receipts and net profits shown in the accounts of other companies could properly be applied in estimating the gross receipts and net profits of the Appellant. The Respondent therefore admitted in evidence and considered a statement, Exhibit R.14, prepared by the Assessor showing the relevant figures in the case of seven other bus companies. The Respondent satisfied himself that these figures were accurately produced from the office files of the taxpayers, but the names of these other bus companies were not disclosed at the hearing, because to have done so would have been a breach of the secrecy provisions of the Ordinance. 10

While accepting the basis of estimation upon which the Assessor had proceeded as a proper one, the Respondent reduced the Assessor's estimates in respect of three out of the four years under consideration, having regard to the evidence of the Appellant's representatives that the situation of the Appellant's garages brought about some unproductive mileage and that the Appellant's services were through rural areas.

p. 13, l. 21 8.—The Appellant appealed to the Board of Review under Section 71 of the Income Tax Ordinance stating its grounds therefor in a letter to the Clerk *inter alia*, that the Respondent was wrong in rejecting the figure of gross takings returned by the Appellant, in estimating the Appellant's profits by reference to its petrol and oil expenditure, and in considering evidence relating to the profits of other bus companies without giving the Appellant an opportunity of examining the files on which such evidence was based. 20

p. 30, l. 23 9.—The appeal was in due course heard by the Board of Review under Section 73 of the Income Tax Ordinance. For the purpose of the appeal, the Board had before it the documents which were before the Respondent, and, in addition, Exhibits A.16–19. 30

p. 17, l. 27
p. 15, l. 9 On the 25th May, 1949, the Board of Review confirmed the assessments as determined by the Respondent on appeal to him.

p. 15, l. 10 The decision of the Board of Review must be referred to for its full terms. The Board considered in particular that the onus placed on the Appellant under Section 73 (4) of the Ordinance had not been discharged, that the accounts of the Appellant were unreliable, that the Assessor took into account relevant considerations when he made the assessments, and that he had not in any way acted capriciously.

p. 17, l. 31 10.—The Appellant in due course required the board to state a Case on questions of law for the opinion of the Supreme Court pursuant to Section 74 (1) of the Income Tax Ordinance. The Board stated a case 40

p. 17, l. 1

accordingly, but the case so stated by the Board was remitted to the Board by an Order of the Supreme Court of the 31st January, 1950, to be amended by the embodiment as points of law of certain questions raised in the Appellant's application for a case. The case was in due course amended by the Board so as to incorporate the questions which are set out in the amended Case as follows :

- (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 ?
- 10 (B) Was the Document R.14 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 ?

11.—The amended Case Stated came on for hearing in the Supreme Court of Ceylon (Dias, Senior Puisne J., and Swan, J.) on the 27th June and the 5th, 6th and 7th July, 1950. On the 18th July, 1950, the Court delivered judgment confirming the assessments as determined by the Board of Review.

20 The Senior Puisne Judge considered that the Court could take judicial notice of the conditions under which the Appellant was operating its bus service and that the Assessor, when he scrutinised the returns sent in by the Appellant, had good reason to suspect their *bona fides*. He observed that the counterfoil ticket books which the Appellant had failed to produce were the foundation of the Appellant's accounting system for ascertaining its gross income and that the Appellant had offered various conflicting explanations for such non-production.

30 The learned Judge considered that the Assessor was entitled not to be satisfied with the accounts submitted to him and to make an estimated assessment. The learned Judge observed that Income Tax Officers in Ceylon do not function as a Court of Law and are not expressly required to act on lawful evidence. He held that, provided the procedure adopted was fair and in accordance with the principles of fair play and natural justice, a document such as that relating to the receipts, expenses and net profits of other bus companies was not inadmissible and could properly be relied on in making estimated assessments.

40 The learned Judge decided further that even if that document were rejected, there were in evidence other documents upon which the Assessor might properly proceed, including one computed by the Assessor upon information supplied by the Appellant, and that, in making his Order, the Respondent was acting on material which was properly in evidence at the hearing of the Appeal by him.

Swan, J., agreed.

12.—The Respondent humbly submits that the decision of the Supreme Court of Ceylon is right and should be affirmed, and that this Appeal should be dismissed with costs for the following amongst other

REASONS

- (1) BECAUSE the Assessor upon the information before him was entitled in pursuance of Section 64 (2) of the Ordinance to reject the returns of income of the Appellant for the years in question.
- (2) BECAUSE it thereby became the duty of the Assessor to estimate the amount of the Appellant's assessable income for those years, and to assess it accordingly. 10
- (3) BECAUSE upon the facts disclosed in the Case stated by the Board of Review the business accounts of the Appellant for the years in question were not reliable, and there was no obligation on the part of the Assessor, the Commissioner, or the Board to accept them as reliable.
- (4) BECAUSE the Respondent as Commissioner of Income Tax was entitled upon the appeal to him by the Appellant against the assessments under Section 69 of the Ordinance, to dispose of the appeal as he did, namely by confirming the assessment for the year 1943/44, and reducing those for the other years to the figures set out in the Case and no further. 20
- (5) BECAUSE on such appeal and on the material before him the Respondent as such Commissioner was entitled to estimate the assessable income of the Appellant for the years in question at the amounts determined by him.
- (6) BECAUSE on the appeal to the Board of Review the only question for the Board was whether the estimates of the Appellant's income for each of the years in question as determined by the Respondent, were excessive. 30
- (7) BECAUSE by virtue of Section 73 (3) of the Ordinance the onus was on the Appellant to establish that the amounts of the assessments were excessive, and the extent to which they were so excessive.
- (8) BECAUSE the Appellant failed to discharge that onus, and the determination by the Board that the Appellant had so failed was not against the weight of evidence.
- (9) FOR the Reasons given in the Judgment of the Senior Puisne Judge.

J. MILLARD TUCKER. 40
REGINALD HILLS.

Surely if it is conceded that there may be something in this percentage method of calculation, yet it ^{must} depend to a great extent on the degree to which the company supervises its conductors. If the supervisor is slack or inefficient, then the profits will not be ^{as great as they might otherwise be.} In this respect, ^{i.e. of SUPERVISION,} companies may differ considerably. Our company is a comparatively new one and may not have got its organisation going properly. It is stated at page 26 (2nd paragraph) that the investigation brought to light an unsatisfactory state of affairs with regard to the accounting system observed by the assessor. That being so, it might also reflect ADVERSELY on the company's profits (i.e. looking at things from the company's or assessor's own angle)

In one year, the gross receipts of the company amount to 708054 rupees. Taking the average ticket (i.e. fare) costing one rupee (it may well be less) is it seriously suggested that the company should produce 708054 ~~some~~ carbon counterfoils of tickets? - in one year alone. The opposition's ~~point~~ case makes a big point on the failure of the company to produce its carbon counterfoils of tickets. The assessor (see 32) suggests that 1024219 ticket counterfoils should be produced.

26, 1952

In the Privy Council.

No. 36 of 1951.

ON APPEAL FROM THE SUPREME COURT OF
CEYLON.

BETWEEN

THE GAMINI BUS COMPANY
LIMITED (A Company duly incor-
porated under the Companies
Ordinance and having its registered
office at Pepiliyana, Negegoda)
APPELLANT

AND

THE COMMISSIONER OF INCOME
TAX, COLOMBO ... RESPONDENT.

CASE FOR THE RESPONDENT

BURCHELLS,
9 & 10 King's Bench Walk,
Temple, E.C.4.
Solicitors for the Respondent.