

IN THE MATTER OF AN APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA

In the matter of an application for a  
Case Stated under section 141 of  
Inland Revenue Act.No.38 of 2000  
(presently Section 170 of Inland  
Revenue Act No.10 of 2006)

CA Tax No.10/2009  
BRA 562/SCA 225

Janashakthi Securities Ltd  
"Avaranya"  
No.120 D.S. Senanayake Mawatha,  
Colombo 08.

**APPELLANT**

Vs.

Commissioner General of Inland  
Revenue,  
Department of Inland Revenue  
Sir Chittampalam Gardiner Mawatha  
Colombo 02.

**RESPONDENT**

**BEFORE** : S. SRISKANDARAJAH, J (P/CA)  
DEPALI WIJAYASUNDERA, J

**COUNSEL** : S.Nadana Siva,  
for the Appellant.

Milinda Gunatilake,DSG  
for the Respondent

**Argued on** : 29.03.2012 & 20.06.2012

**Decided on** : 17. 07.2013

**S.Sriskandarajah,I**

This is an appeal from an order of the Income Tax Board of Review on an application made by the Assessee Company dated 25/08/2009. The following question of law was submitted by the Income Tax Board of Review to the Court of Appeal for determination:-

Whether the Board of Review was justified in determining that gains arising from the business of the Assessee are liable to tax as profits of a business carried on by the Assessee?

This appeal relates to income tax years, viz., 2001-2002 and 2003-2004. The Assessee disclosed the income in the year of assessment 2001-2002 as, loss from trade, Rs.897,859/-. After consideration, the assessment was issued by the Income Tax Department as follows:-

**2001-2002**

Profit from business:	Rs.56,916,526/-
Tax payable:	19,920,784/-
Surcharge payable:	3,984,157/-

The declaration of the Assessee for the year of assessment 2003-2004 is as follows:-

**2003-2004**

Income exempts from tax:	Rs.594,692,450/-
Gross dividend distributed:	500,000,000/-

The Assessee was assessed by the Department for the year of assessment 2003-2004 as follows:-

**2003-2004**

Profit from business:	Rs.479,837,460/-
Gross Tax Payable (including Rs.50,000,000/- as withholding Tax on dividends):	Rs.205,947,174/-

For the purpose of income tax, "profits and income" or "profits" or "income" is defined as ( under Section 3 of the Income tax Act)-

the profits from any trade, business, profession or vocation for however short a period carried on or exercised;

Capital gain defined in the said Act as follows:

(1) "Capital gain" means the profits or income, not being profits or income within the meaning of paragraph (a), (g) or (i) of section 3, arising from"

(a) the change of ownership of any property occurring in any manner whatsoever ;

(b) the surrender or relinquishment of any right in any property ;

(c) the transfer of some of in lights in any property ,

(d) the redemption of any share, debenture to other obligation ,

(e) the formation of a company ,

(f) the dissolution of a business of the liquidation of a company ,

(g) the amalgamation or merger of two or more businesses or companies ,  
or

(h) any transaction in connection with the promotion of which any person who is not a party to such transaction receives a commission or reward

The Appellant submitted that all income received by the company are not taxable but only income received by a business are subject to tax.

This position of the Appellant was rejected by the Commissioner in the first instant and by the Board of Review in appeal. Both came to the conclusion that all income derived by the Appellant is from his trade. The Appellant had

been incorporated to carry on the business of investment. The Appellant invested in government securities such as Treasury Bonds and Treasury Bills on continuous basis. There were 240 transaction of this nature in the relevant year and the income was derived from this trading transaction.

It was held in *National Provident Institute v Brown* 8TC57 that the sum realised by the purchaser whether by holding the bill until maturity or by selling it or converting it before maturity, represents profits chargeable to income tax and no part of that profit is an accretion of capital.

The Appellant had declared a part of the income derived from repurchase and reverse repurchase of treasury bonds as capital gain which is erroneous and all income whether interest received or profits derived from repurchase and reverse repurchase of treasury bonds form part of the income derived from the business as the business of the Appellant in investing in government bonds and treasury bills. Therefore there are taxable as profit from business.

It is the position of the Appellant that his business is none other than investment and since there was a withholding tax already deducted at the point of the original release of the Treasury bill therefore there is no need to claim a further tax when such a bill was brought in the secondary market from the original investor. The appellant contented that in such transaction the only gain is the earnings on that capital sum of money as such it is a capital gain which is exempted under Section 14(2) of the said Act. As withholding tax had been collected for the year of assessment 2001/2002 on the treasury bills and bonds purchased and sold by the appellant in the secondary market no further tax or surcharge is payable.

Section 122 provides that the Bank and financial institutions are empowered to deduct from the interest payable, income tax at the rate of ten per centum if that person is chargeable with income tax under this Act. It is apparent from this section that the interest earned by the person concerned by treasury bills

and treasury bonds are subject to a tax only if that person is liable to income tax otherwise i.e by his other business or income. In that event if the income tax payable by him for that year of assessment exceeds the total of the deductions made under section 122, section 122A or section 122B he shall be entitled, to deduct from the income tax payable by him for that year of assessment.

Section 123. Where the assessable income of a person for any years of assessment includes a payment of interest referred to in section 122, section 122A or section 122B, then-

“if the income tax payable by him for that year of assessment exceeds the total of the deductions made under section 122, section 122A or section 122B he shall be entitled, on production of a statement relating to such payment made in accordance with that section, to deduct from the income tax payable by him for that year of assessment- the amount of tax set out in such statement; “

A credit for tax deduction is given for a person who is liable to pay tax on his income and in that income if the interest component on any investment is included and if a withholding tax was deducted for that interest the amount withheld be deducted from the income when considering the calculation of income for the purpose of tax. In the present appeal the Appellant's only business is to carry on the business of an Investment Trust Company. As such it cannot have any other income other than the income on interest and the profit on the repurchase and reverse repurchase of treasury bonds. As this is a business income this will not attract credit for tax deduction ( Section 123).

The question of Law forwarded to this court by the Board of Review for opinion is “Whether the Board of Review was justified in determining that gains arising from the business of the Assessee are liable to tax as profits of a business carried on by the Assessee Company?”

The considered opinion of this Court for the reasons discussed above is that, the Board of Review is justified in determining that gains arising from the business of the Assessee are liable to tax as profits of a business.

President of the Court of Appeal

Deepali Wijayasundera, J

I agree,

Judge of the Court of Appeal