

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal by way of stated case on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended)

The Young Men's Buddhist Association,
No. 70, D.S. Senanayake Mawatha,
Colombo 08.

APPELLANT

Case No. CA/TAX/25/2014

Vs.

Tax Appeals Commission Case No.

TAC/OLD/IT/007

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

RESPONDENT

Before: Janak De Silva J.

Achala Wengappuli J.

Counsel:

Dr. Shivaji Felix with Gamini Balasooriya for the Appellant

Manohara Jayasinghe SC for the Respondent

Written Submissions tendered on:

Appellant on 20.03.2018 and 24.01.2019

Respondent on 31.08.2018, 08.10.2018 and 20.12.2018

Argued on: 18.09.2018 and 03.12.2018

Decided on: 08.03.2019

Janak De Silva J.

The Appellant has been incorporated by the Young Men's Buddhist Association, Colombo Ordinance No. 11 of 1927 (Ordinance). The Appellant submitted its return of income tax for the years of assessment 2004/2005, 2005/2006 and 2006/2007. The returns were rejected by the assessor for the reason that the Appellant has treated the profits and income received as rent from premises owned by the Appellant as exempt from income tax. The assessor issued assessments for the said periods.

The Appellant appealed to the Respondent who dismissed the appeals and confirmed the assessments issued by the assessor.

The Appellant appealed to the Tax Appeals Commission (TAC) who confirmed the determination of the Respondent subject to the qualification that the rent income of the Appellant should be subject to tax at the rate of 10%. The Appellant then requested the TAC to refer a case stated to this Court.

The TAC has submitted the following questions of law as a case stated:

1. Is the Appellant a company within the contemplation of section 186 of the Inland Revenue Act, No. 38 of 2000(as amended) and section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)?
2. Did the Tax Appeals Commission err in law when it came to the conclusion that the Appellant's rental income could not be classified as business income?
3. Without prejudice to the above, in the event that the business profits of the Appellant are applied solely for the charitable purposes of the Appellant and the business is carried on in the course of the actual carrying on of the primary purpose of the Appellant are such profits exempt from income tax under and in terms of section 8(d)(i)(a) of the Inland Revenue Act No. 38 of 2000 (as amended), and section 7 (e)(i)(A) of the Inland Revenue Act, No. 10 of 2006 (as amended)?
4. In view of the facts and circumstances of the case did the Tax Appeals Commission err in law when it came to the conclusion that it did?

Question 1

Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) gives a common meaning to the word "company" and reads:

""company" means any company incorporated or registered under any law in force in Sri Lanka or elsewhere and includes a public corporation"

The Appellant was established by the Ordinance and it is here that Court must begin the quest to ascertain the true constitution of the Appellant.

The preamble states that the Ordinance is to incorporate the Young Men's Buddhist Association, Colombo. Hence the Appellant prior to incorporation was an association. Section 2 of the Ordinance states that after incorporation the president, vice-presidents, and members of the committee of management for the time being of the Young Men's Buddhist Association, Colombo, and such and so many persons as now are members of the Young Men's Buddhist

Association, Colombo, or shall hereafter be admitted members of the corporation thereby constituted, shall be and become a corporation with continuance forever. Clearly the Appellant progressed from an association to be a corporation. The Appellant is throughout the Ordinance referred to as a corporation. For example, section 3 of the Ordinance sets out the general objects of the corporation. Section 4 of the Ordinance states that the management of the corporation shall be by a committee of management. Section 8 of the Ordinance vests the property belonging to the Young Men's Buddhist Association, Colombo in the corporation.

The learned counsel for the Appellant submitted that the Appellant having being incorporated under the Ordinance, is a corporation and, therefore a company within the contemplation of the statutory definition of the term set out in Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended).

The common characteristics of a corporation are a distinctive name, a common seal and perpetuity of existence¹. Corporations can be either corporations sole or corporations aggregate². The Appellant is a corporation aggregate.

The corporations known to our law are those created under general statutes such as the Companies Ordinance, and those created by special statutes by which corporate status is granted to particular individuals or bodies of persons³. Hence while all companies are corporations all corporations are not companies.

Therefore, I reject the argument of the learned counsel for the Appellant that the Appellant is a company within the meaning of the statutory definition of the term set out in Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) merely because it is a corporation.

¹ C.G. Weeramantry *The Law of Contracts*, Vol. I, 517

² *Ibid.* page 515

³ *Ibid.*

Furthermore, Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) uses both the words “means” and “includes”.

Bindra, Interpretation of Statutes, 10th Ed., page 1646

"It is a well-known rule of interpretation that the word "include" is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which precedes it. To add to the general clause a species which do not naturally belong to it."

In *Province of Bengal v. Hingul Kumari* [AIR 1946 Cal 217 at 224] Das J. held:

"It is well-known that the legislature uses the word 'means' where it wants to exhaust the significance of the term 'defined' and the word 'includes' where it intends that while the term defined should retain its ordinary meaning its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerated but not exhaustive."

Both section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) uses the word “means” to firstly limit the meaning of the word “company” to “any company incorporated or registered under any law in force in Sri Lanka”. Thereafter it uses the word “includes” to denote that the meaning of “company” is enlarged by adding a species which do not naturally belong to it namely “public corporation”. The word “public corporation” is defined in section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) to mean any corporation, board or other body which was or is, established by or under, any written law, other than the Companies Act No. 7 of 2007, with capital wholly or partly provided by the Government, by way of grant, loan or other form. The Appellant is not a public corporation within this meaning.

This is also supportive of the conclusion made earlier that all corporations are not companies since if it was the case there was no need to use the word “includes” in the definition of “company” and add “public corporation” to the meaning of “company”.

The learned counsel for the Appellant submitted that the Companies Act No. 7 of 2007 is not the exclusive method by which a company can be incorporated in Sri Lanka and referred Court to section 519(1) of the Companies Act No. 7 of 2007. Court accepts the position that a company can be incorporated in Sri Lanka under some other enactment but holds that for the reasons set out above the Appellant is not a company but is only a corporation.

Accordingly, this Court is of the view that the Appellant is not a company within the meaning of section 186 of the Inland Revenue Act, No. 38 of 2000(as amended) and section 217 of the Inland Revenue Act No. 10 of 2006 (as amended).

Question 2

The learned counsel for the Appellant submits that since it is a company its rental income must be classified by operation of law as business income. He relied on a ruling bearing No. ACT/03/15, Ref No IC 2014/62 of the Committee for Interpretation of Tax Laws and sections 3(a) and (g) and the definition of the word “business” in section 217 of the Inland Revenue Act No. 10 of 2006(as amended).

However, Court has earlier set out the reasons as to why the Appellant is not a company. Accordingly, the TAC did not err in law when it came to the conclusion that the Appellant’s rental income could not be classified as business income.

Question 3

Only a question of law can be referred to Court by the TAC. However, this question is based upon the hypothesis that the business profits of the Appellant are applied solely for the charitable purposes of the Appellant. Evidence to support this assertion was not placed before the assessor, the Respondent or the TAC.

On the contrary, the TAC determination (at page 7) indicates that the Appellant had submitted that all revenue is spent in the furtherance of the charitable objects of the institution, subject to the expenses incurred on its own establishment and the provision of service facilities to the lessees of the rental buildings by way of lifts, free electricity and water (except for the interior electricity requirements of the commercial tenants), 24-hour security, janitorial services, free car

parking (where available), stand by generators and free canteen premises with fans and lighting, the canteen been operated by third parties. Hence the hypothesis on which question 3 is premised is flawed.

Furthermore, in *Grove v. YMCA* (4 TC 613) it was held that the running of a restaurant on a commercial basis was not furthering the primary objects or the purpose for which the YMCA was established. On a parity of reasoning the provision of facilities to the lessees, by renting buildings of the Appellant was not in furtherance of the primary objects for which the Appellant was established and hence the profits from the provision of these services would become liable to income tax.

In any event, question 3 is based upon the assertion that the Appellant is a company and as set out above, it is only a corporation and not a company.

Furthermore, on the one hand the Appellant claims to be a charitable institution for the purpose of determining the rate of income tax, which is 10% as held by the TAC. On the other hand, it claims to be a business for the purpose of deductions for expenses in terms of section 25 of the Inland Revenue Act No. 10 of 2006 (as amended). The Appellant is in this instant seeking to approbate and reprobate which cannot be allowed.

In *Ranasinghe v. Premadharmma and others* [(1985) 1 Sri.L.R. 63 at 70] Sharvananda J. (as he was then) held:

“In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. When the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one, he cannot afterwards assert the other; he cannot affirm and disaffirm”

For the foregoing reasons, Court answers the questions of law as follows:

1. Is the Appellant a company within the contemplation of section 186 of the Inland Revenue Act, No. 38 of 2000(as amended) and section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)? **No.**

2. Did the Tax Appeals Commission err in law when it came to the conclusion that the Appellant's rental income could not be classified as business income? **No.**
3. Without prejudice to the above, in the event that the business profits of the Appellant are applied solely for the charitable purposes of the Appellant and the business is carried on in the course of the actual carrying on of the primary purpose of the Appellant are such profits exempt from income tax under and in terms of section 8(d)(i)(a) of the Inland Revenue Act No. 38 of 2000 (as amended), and section 7 (e)(i)(A) of the Inland Revenue Act, No. 10 of 2006 (as amended)? **Does not arise as firstly the hypothesis on which question 3 is premised is flawed. Secondly, this question is based upon the assertion that the Appellant is a company and as set out above, it is only a corporation and not a company. Thirdly, the Appellant is in this instant seeking to approbate and reprobate which cannot be allowed.**
4. In view of the facts and circumstances of the case did the Tax Appeals Commission err in law when it came to the conclusion that it did? **No.**

Accordingly, acting in terms of section 11A (6) of the TAC Act No. 23 of 2011 as amended, we confirm the assessment determined by the TAC.

The Registrar is directed to send a certified copy of this judgment to the TAC.

Judge of the Court of Appeal

Achala Wengappuli J.

I agree.

Judge of the Court of Appeal