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

In the matter of an appeal under and in terms of the Inland Revenue Act No.38 of 2002 (as amended).

C.A. Appeal No. Tax 08/10

Board of Review No.BRA528

John Keels Holdings PLC

No,130, Glennie Street,

Colombo.2

Applicant-Appellant.

Vs.

Commissioner General of Inland Revenue

Department of Inland Revenue,

Sri ChittampalamA.Gardiner Mawatha,

Colombo 2.

Respondents.

Before : M.M.A.Gaffoor,J, and
Deeplai Wijesundara,J.

Counsel : Maithri Wickremasinghe P.C. with Rakitha Jayatunga for the Appellant.

Anusha Samaranayake DSG for Respondent.

Argued on : 23/11/2016

Decided on : 28/06/2017

M.M.A.Gaffoor,J.

This is an appeal filed by the John Keels Holding PLC against the determination of the Tax Appeal Board of Review dated 30th March 2010. The questions of law formulated in this appeal are as follows:-

1. Did the Board of Review err in law in failing to determine that the sum of Rs,35,846,409.00 arising on the sale of Treasury Bills held by the Appellant in the Secondary

Market constitutes ' Capital Gains' in accordance with the provisions of the Inland Revenue Act No.28 of 1979 as amended (hereinafter referred to as 'the Act') and was therefore exempt form income tax by virtue of section 14(1) (a) (xxii) introduced by the Inland Revenue Act No.35 of 1993 ?

2. Did the Board of Review err in law in determining the said gain of Rs.35, 846,409.00 on the sale of Treasury Bills held by the Appellant in the Secondary market as a combination of Capital Gains amounting to Rs.51,317 and interest amounting to Rs.35,795,092 ?

3. Did the Board of Review err in law in failing to hold that the Commissioner General of Inland Revenue , was not justified in determining the appeal applying one source of income i.e. Trade, based on his reasons, which was entirely different from the source of income i.e. interest, based on reasons stated by the Assessor, to justify his assessment?

The appeal relates to the years of assessment 1994/1995. The contention of the Appellant is that the Board of Review has acted contrary to express Provisions of Section 14 (xxii) of the Inland Revenue Act No. 28 of 1979 as amended by Act No.35 of 1993 which exempts from income tax any capital gains on the sale of treasury bills in the secondary market.

Counsel for the appellant submitted that within the year of assessment 1994/1995 the Appellant acquired and sold treasury bills in the secondary market and the Board of review do not dispute that the transaction is purchase and sale of treasury bills in the secondary market. The profit earned on this purchase and sale of treasury bill in the secondary market amounted to Rs.35,846,409.00 and the appellant claimed these profits as capital gains exempted from income tax under Section 14 (a) (xxii) of the Inland Revenue Act as amended. The senior assessor rejected the return for the year of assessment 1994/1995 on the basis that the claim for exemption as capital gain could not be accepted because when treasury bills are sold in the secondary market before maturity, as according to the Assessor, the gain will consist of interest and capital gains. The assessor determined that out of the sum of Rs. 35,795,092.00 of the capital gain a sum of Rs.35,846,409.00 is the interest and was taxable. The appellant appealed to the Board of Review. The Board of Review by its determination held that a sum of Rs.35,846,341.00 was interest attributable to the period during which the treasury bills were held by the appellant before the sale, is taxable.

Counsel further draws the attention of Court that Section 2 of the Inland revenue Act read with Section 3 (h) of the Inland Revenue Act makes income tax chargeable on capital gains made by a person.

> "for the purposes of this Act, 'profits and income' or 'profits' or 'income' means ......
>
> (h) capital gains...."
>
> *Accordingly, capital gains made on transaction by a person was taxable under this general provision.*

Under the Section 2 of the Inland Revenue Act, the Income Tax is chargeable in respect of profits and income of every person. Section 3 of the Act has defined the capital gain as an income. The Section provides that;

For the purpose of this Act, 'profits' and 'income' or 'profits or income' means

(h) capital gains ......

Accordingly the general law is that the capital gain is taxable.

Section 7(2) of the Act defines that *' in relation to the capital gain of any person the profits and income arising from the change of the ownership of property means subject to the provisions of Section 7 (4) the amount by which the value of the property at the time of such change occurs exceeds its value at the time it was acquired by that person'*

In other words it means that 'the difference in value between the purchase price and the sale price'. In this case the Appellant acquired and sold Treasure Bills in the secondary market and the price difference was Rs.35,846,409.00 which is the questioned amount. According to the definition of the Act, it is a capital gain. As I pointed out earlier, this amount is taxable under the general law until the Inland Revenue (Amendment) Act No.35 of 1993 was enacted. By this amendment the Legislature, in its wisdom, decided to exempt from the income tax the capital gain arising on the sale of treasury bills in the secondary market. The Section 14 (xxii) of the Amendment Act reads:

There shall be exempt from income tax any capital gain arising on the sale by any person of any treasury bill held by such person in the secondary market.

In presenting the Bill to the parliament the Minister of Finance explained the purpose for which the amendment exempting capital gains on the sale of treasury bills in the secondary market was introduced. The Minister of Finance in parliament introducing the Appropriation bill for 1993 explained the purpose in the following terms;

> *''Mr. Speaker, the government has initiated action to issue long terms Treasury Bills as an alternative way to borrowing only a long terms rupee securities. Therefore, as a measure to promote the Treasury bill market. I purpose to exempt from income tax any capital gains arising on the secondary market transaction of such bills.''*

There is no dispute that the amount involved in this case is a capital gain. The respondent's contention is that this amount includes an interest component and it has to be taxed.

The Amendment Act has expressly provided that the capital gain arising out of the sale of treasury bills in the secondary market is exempted from income tax. If the words used in the statue are clear enough to express the intention of the

Legislature, no restriction should be placed on such provisions by way of interpretation so as to defeat the purpose of granting such exemption.

In the case of **(1991) 1 Sri L R 97 Nanayakkara Vs. University of Peradeniya** where the liability to pay the stamp duty was considered and S.N.Silva J. (as he was then) held at page 101.

" The stamp duty Act imposes a pecuniary burden on the people. Therefore it is subject to the rule of strict construction. ((Maxwell on Interpretation of Statues), 12th Edition page 256) in the case of Cape Brandy Syndicate Vs. I.R. Cm Rowlatt J. stated as follows:

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax.

Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

At page 102 further held that ;

A necessary corollary of applying the rule of strict construction to determine liability under a taxing statute, is that any provision granting an exemption from such liability be given its full effect. Exemptions are provided for by the Legislature for the purpose of giving a measure of relief to a person who would otherwise be liable to tax under the general rule. Therefore no restriction should be placed on such provisions by way of interpretation so as to defeat the purpose of granting such exemption.

This decta has been followed in other cases and is also cited by Maxwell"

It is established law that the Fiscal Statute need a strict interpretation. The Respondent does not challenge this rule. In his submissions the learned Counsel for the Respondent has admitted this rule.

The Respondent's argument is that the Section 113 A of the Act applies and the capital gain is taxable. I do not agree with this argument. This Section applies only to the deductions to be made by the banks of Financial Institutions. On the other hand, the schedule given in that Section refers to the sale of treasury bills at the maturity, not on the sale of treasury bills in the secondary market.

Counsel for the appellant further submits that according to the Section 2 of the Registered stock and securities Ordinance provides for the issue of registered stock, promissory notes and bearer bonds and treasury bond Section 7,17,20 and 21Q of the Registered Stock and Securities Ordinance requires the Government to pay the principal sum and interest on registered stock , Government Promissory Notes bearer bonds and treasury bonds respectively.

For the reasons stated above, I answer the questions of law as follows.

1.Yes

2. Yes

3. Yes

Accordingly, I annual the assessment and allow the appeal.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesendara,J.

I agree.

JUDGE OF THE COURT OF APPEAL