JMC vLearning
"your virtual learning partner"

Case Law

Chartered Accountancy
Strategic Level
Corporate Taxation (TAX)

Dinusha Rajapaksha
ACA, CTA, Attorney at Law, LL.B Hons.

JMC ජයසේකර කළමනාකරණ මධ්‍යස්ථානය Estd. 1972
JAYASEKERA MANAGEMENT CENTRE (PVT) LTD

JMC Jayasekera Management Centre (Pvt) Ltd
Pioneers in Professional Education
65/2A, Chittampalam Gardiner Mawatha, Colombo 02 | T: +94 112 430451 | E: info@jmc.lk | F: +94 115 377917

CASE LAW - TAXATION

Profit from Employment	• Craib v Commissioner of Income Tax • Sutherland v Commissioner of Income Tax • Kanagasabapathy v Commissioner General of Inland Revenue	• CTC – Volume 1 • CTC – Volume I • SLTC – Volume IV
Profits and income arising in or derived from Sri Lanka	• Anglo-Persian Oil Co. Ltd. v Commissioner of Income Tax • Chivers & Sons Ltd. v Commissioner of Income Tax	• CTC – Volume 1 • CTC – Volume 1
Income from any other source	• Wickramasinghe v Commissioner of Income Tax	• CTC – Volume 1
Adventure or concern in the nature of trade	• D. S. Mahawitharana v CIR • Ram Iswera v CIR • Commissioner of Income Tax v C. S. De Zoysa • Rutledge v CIR • CIR v Livingstone and Others • IRC v Fraser • CIR v Reinhold • Martin v Lawry	• CTC – Volume III • CTC – Volume III • CTC – Volume I • 14 TC 490 • 11 TC 538 • 1942 24 TC 498 • 34 TC 389 • 11 TC 297
Annuity	• The Commissioner of Inland Revenue v J. M. Rajarathnam	• CTC – Volume III
Partnerships	• A. A. Davoodbhoy v Commissioner General of Inland Revenue	• SLTC – Volume IV
Capital and revenue expenditure	• Vallambrosa Rubber Co. Ltd. v Farmer • Hancock v General Reversionary & Investment Co. Ltd. • Artherton v British Insulated & Helsby Cables Ltd • Theobald v Commissioner of Income Tax • Associated Portland Cement Manufacturing Co. v Kerr • Mitchell v Noble	• 05 TC 529 • 07 TC 358 • 10 TC 155 • TC – Volume I • 27 TC 103 • 11 TC 372 • CTC – Volume I

	• Haughton Tea Company Limited v Commissioner of Income Tax • Law Shipping Co Ltd v CIR • Odeon Associated Theatres Ltd v Jones • The National Mutual Life Association of Australia Ltd. V Commissioner of Income Tax	• 12 TC 621 • 48 TC 257 • CTC – Volume I
Expenses incurred in production of profits & income	• Heyley and Co. Ltd v The Commissioner of Inland Revenue • Commissioner of Inland Revenue v A.W. Davith Appuhamy • Strong v Woodifield • Rajapakse v Commissioner of Income Tax	• CTC – Volume III • CTC – Volume III • 05 TC 215 • CTC – Volume I
Reasons for rejection of the returns	• D.M.S. Fernando and Another v Mohideen Ismail • New Portman Ltd v W. Jayewardene and Others	• 04 CTC 156 • SLR – 307, Vol 1 of 1989
Meaning of plant	• Thornhill v Commissioner of Income Tax • Chelvanayakam v Commissioner of Income Tax	• CTC – Volume I • S.C. 148 - (Inty)

Profit from Employment

1. ***Craib v Commissioner of Income Tax*** **(CTC – Volume 1)**

The assessee, who is the Superintendent of an estate received a sum of Rs. 10,000 in terms of a resolution passed by the Directors of the Company, which employed him. The resolution was as follows: — "In view of Mr. Craib's exceptional services to the Company and in consideration of the fact that he has to undergo medical treatment while at Home, it was resolved to grant him a special bonus of Rs. 10,000 "

The question was whether the payment was " profits from employment" within the meaning of section 6 (2) (a) of the Income Tax Ordinance.

The Court decided : "This payment I prefer to regard in the light of a personal gift the motive for which, no doubt, but not the consideration, was the long service rendered to the Company by the appellant. The present situation has risen out of the description of the payment as a " bonus" and, as I have already hinted, I do not think the appellant should be penalized for the choice of a word, whether it be deliberate or accidental, by the party making the payment."

Tax principle: The mere fact that a payment is made to an employee as a result of or in connection with his employment is not enough to render the payment liable to tax. Thus, a special bonus paid to an employee in view of his exceptional service to the company and in consideration of the fact that he had to undergo medical treatment at home and abroad was held to be not profit from employment.

2. ***Sutherland v Commissioner of Income Tax*** **CTC – Volume I**

Sutherland, the husband of the appellant, was the employee of the company. Shortly after his death the following resolution was passed by the board of directors of the company;

"The directors having taken not that a sum of Rs. 15,750 had been placed to reserve to meet the contingent liability to pay for Sutherland's leave pay which he would have been entitled to if he had survived, it was decided to pay Mrs. Sutherland's passage to England, namely Rs. 1,502, and to authorize a payment to her of Rs. 15,750."

A letter written two days after the resolution stated that "a further sum of Rs. 15,750 is to be paid to Mrs. Sutherland in respect of the late Mr. Sutherland's overdue leave pay.

There was no evidence that the payment was made to Mrs. Sutherland as the executrix of the estate or that it was a debt due from the company to the deceased. The appellant was assessed to income tax in her capacity as executrix in respect of the above sums as forming part of the profits from the deceased's employment within the meaning of section 6(1)(b) and section 6(2)(a)(l) and (v).

Held:

(1) That the circumstance that at various times the company's officials chose such expressions as "overdue leave pay" and "accumulated furlough pay and passage money due to the late Mr. Sutherland" to describe the nature of the payment had no bearing on the nature of the payment.

(2) That the payment in question was a gift to the appellant personally of sum of maney to which the deceased was not entitled and was not a payment made to her in her capacity as executrix.

(3) That it was not a profit from the deceased's employment within the meaning of section 6(1)(b) and section 6(2)(l) and (v) of the Income Tax Ordinance.

Tax principle: The decision was on the basis that the motive for the gift was the circumstances that it represented a sum of money the husband would have been entitled to if he survived though he dies before he became entitled to it. The Court also took into account that there was no evidence of an express contractual obligation of the company to pay the leave pay to the deceased.

3. ***Kanagasabapathy v Commissioner General of Inland Revenue*** **SLTC – Volume IV**

Profits from employment – Moneies received under a Health Insurance Scheme as reimbursement of medical expenses incurred in respect of assessor's mother. Does it fall within the definition of "profits from employment" in section 3(4)(a) of Act No. 4 of 1963. Is this definition different from expression in Section 6(2)(a) of the Income Tax Ordinance (Chapter 242) – Burden of proof.

Appellant an employee of the Central Bank received under his Health Insurance Scheme reimbursement of medical expenses incurred by his mother, a dependent relative eligible under the scheme. Assessee's position was his mother and not himself and therefore does not constitute his "profits from employment" within the meaning of the Income Tax Ordinance (chap. 242) of the Inland Revenue Act, No. 4 of 1963.

The court of appeal held that it was the Assessee who was entitled to the payment and that such payment fell within the meaning of the section 3(l)(b) read with section 3(4)(a)(i) of the Inland Revenue Act, No. of 1963.

Held,

1. The kinds of receipts enumerated in the statute beginning from "wages" going down to "perquisites" are receipts in respect of a person's service as an employee. The receipt must be one derived by reason of his employment. They must be receipts which an employee receives in the course of his employment.
2. Our law is not in any way different in this regard from the position in UK. The Court must be satisfied that the service agreement was the "*causa causana*" and not merely the "*cause sine quo non*" of the receipt of the profit. The test is whether the payment made by way of reimbursement form medical expenses incurred in respect of his mother was received by him in return for acting as or being an employee.
3. In tax cases it is always necessary to remind oneself that when it is sought to impose a tax on the subject, the burden is always on the revenue authorities to prove that tax is exigible.
4. The interpretation placed by the Court of Appeal on the amending provisions is too wide and not justified by either the wording or the context.
5. The receipts are not taxable and the appeal is allowed.

The benefit conferred to the employee or the member of his family are liable as profit from employment of such employee if it can be established that the benefit received is a reason of his employment. The benefit to eb liable for tax must be received in return for acting or being an employee and it is not enough for the taxing authorities to establish that the benefit would not have been received had he not been an employee.

"The essential point is that what was paid to an appellant was paid to him in respect of his personal situation, for he had taken advantage of the Health Insurance Scheme and accordingly entitled to an indemnity. The payment, which was a reimbursement of the expenses of his mother's illness, had, if at all, only a remote connection with his service. The payment from a distress fund or a fund of a similar nature would *prima facie* indicate that such funds are set up by the employer for the benefit of the employees whose personal circumstances justify assistance. Such payment cannot, in my view be regarded as a profit from employment."

Profits and income arising in or derived from Sri Lanka

1. *Anglo-Persian Oil Co. Ltd. v Commissioner of Income Tax* CTC – Volume 1

Income Tax – Contract for sale of fuel oil made in London by company registered in UK – Delivery to shops at Colombo by company's agent – Payment in London – Profits not arising in or delivered from Ceylon – Agent not instrumental in selling or disposing of property in Ceylon – Section 5 and section 34 of Income Tax ordinance- Contract of sale or agreement to sell

This was a case stated for the opinion of the Supreme Court under section 74 of the Income Tax ordinance.

The assessee (appellant) is the Anglo-Persion Oil Company Limited, registered in the United Kingldom, and its agent in Ceylon is the Anglo-Persian Oil Company (Ceylon) Limited. The appellant company enters into contracts in London with ship owners whose ships call at various ports including Colombo. In Colombo the appellant company had no place of business but stored its fuel oil with its agent, the Ceylon company which trades in fuel oil as part of its business. The appellant company undertook to supply fuel oil for the requirements of the shipping company's vessels at certain named ports including Colombo and at a stated price. The shipping company on its part binds itself to buy from the appellant company all the oil requirements of its vessels at the named ports and the total estimated tons of oil for all the ports are stated. The minimum quantity which the shipping company undertakes to buy and the maximum quantity which it may require the appellant to deliver during the period (which is also fixed) are stated. Payment is to be made in London by cash on receipt of the appellant's agent's telegraphic advice of the quantity delivered. Each delivery shall constitute a separate contract. The appellant has the right to suspend or cancel the contract in the event of the shipping company failing to make the payments provided the contract and in certain other contingencies. The Ceylon company stores the appellant's oil and its oil in tanks built on premises used by the Ceylon company for its own business. When a ship belonging to the shipping company arrives in Colombo a representative of the Ceylon company visits the ship and ascertains the requirements of oil and the required quantity brought in lighters belonging to the Ceylon company and delivered to the ship. A document of delivery and acceptance is signed by the representatives of the ship and the Ceylon company. A copy of this document is sent by the Ceylon company to the appellant in London.

Held,

1. That the property in the goods passed to the shipping company at the time the contract was signed; the Ceylon company being merely an agent for the delivery of the oil, the mere delivery of the oil in Ceylon by them will not bring the profits under the category of "profits arising in or derived from Ceylon" within the meaning of section 5 of the Ordinance.
2. That the word "disposes" connotes clear and intelligible contractual relations between the agent in Ceylon and the dispose and was not intended to refer to such a detail as a mere delivery. If the agent in Ceylon did not actually effect the contract, or if he is not instrumental in effecting it, the non-resident would not be liable on the profits arising on the contract.
3. That section 34 is intended to include contracts which have been entered into as a result of efforts of agents in Ceylon of a foreign principal even when such contracts have been finally concluded outside Ceylon.

2. ***Chivers & Sons Ltd. v Commissioner of Income Tax*** **CTC – Volume 1**

Income tax – Sale of goods by non-resident person - Agent forwarding indent to non-resident person – Agent instrumental in selling goods – Liability of non-resident person to pay tax under section 5(1)(b) read with section 34.

The appellants manufactured goods in England and supplied them to Ceylon F.X. Pereira & Sons, a firm in Ceylon stocked and sold their goods. The local firm displayed samples of the appellant's goods. They had an indent department which arranged for the supply of orders from local dealers of goods shipped by the appellants and others; they canvassed for orders for the appellants' goods from time to time and also forwarded a form of indent addressed to the appelants if they could not supply the goods from their stocks and received a commission from the appellants on all such orders received and executed. There was no formal agency agreement between the appellants and F.X. Pereira & Sons. The appellants had no sole agent in Ceylon. Sometime dealers placed orders directly with the appellants and in such cases no commission was paid to the local firm. The question was (1) whether F.X. Pereira & Sons were acting on behalf of a non-resident person within the meaning of section 34 of the Ordinance. (2) whether they were instrumental in selling or disposing of the appellant's goods. (3) whether the profits arising to the appellants from the sale of their goods on indents placed through F.X. Pereira & Sons should be deemed to be derived by the appellants from business transacted in Ceylon within the meaning of section34, and therefore liable to income tax under section 5(1)(b) of the Ordinance.

Held,

1. That the firm in Ceylon were acting on behalf of the non-resident person by stocking, and displaying and keeping samples of goods of the appellants and by canvassing orders for those goods and by receiving commission on those orders.
2. That the firm in Ceylon were instrumental in selling the appellants' goods within the meaning of section 34.
3. Section 34 must be read along with section 5 and the effect of section 34 is to include under profits arising in or derived from Ceylon, all profits from the sale of goods where such sale has been brought about through the instrumentality of a person in Ceylon acting on behalf of the seller who is outside Ceylon, and in light of the fact that legally the transactions of the business or the sale take place outside Ceylon.

Income from any other source

1. ***Wickramasinghe v Commissioner of Income Tax*** **(CTC – Volume I)**

Fee paid to assessee as arbitrator – Casual and non-recurring nature – Profits from employment - Notice in writing of case stated-Income Tax Ordinance section 6(1) (a), 6 (1) (h); section 74 (3).

The assessee was an ex-Civil servant and a Government pensioner; he was appointed arbitrator by the Colombo Municipal Council in arbitration proceedings connected with the purchase by the Council of the Colombo Tramways. He received a fee of fifteen thousand rupees for acting as arbitrator.

Held

1. that this was not profit of a casual and non-recurring nature and was taxable under section 6 (1) (h) of the Income Tax Ordinance.
2. that the delay of two days in giving notice of the case stated in terms of section 74 (3) of the Ordinance did not deprive the Supreme Court of jurisdiction to hear the case.

Held, that the transaction came within the words "any employment" in section 6 (1) (b); the word 'employment' is not restricted to the case of a man engaged by another.

Adventure or concern in the nature of trade

1. ***D. S. Mahawitharana v CIR* (CTC – Volume III)**

Purchase and sale of property – Adventure in the nature of trade – Scope and nature of power of the Supreme Court to interfere on questions of fact in a case stated Sec. 6(1)(a), 74 of the Income Tax Ordinance (Cap. 188).

The assesses and another acquired an option to purchase an estate of 583 acres and paid a forfeitable cash advance and agreed to complete the purchase within a few weeks. Both had neither the financial capacity nor intention to purchase the estate with their funds or borrowed monies. They quickly procured purchasers for 464 acres of the estate and of the remaining 119 acres, half was sold and the rest was acquired by the government – the proposed acquisition was known to them at the time they acquired their option. It was clear that they did not secure the option in order to purchase the estate for themselves.

Held

1. that on the facts and circumstances proved in the case the inference that the transactions in question were an adventure or concern in the nature of trade was in law justified. The total impression created in all the circumstances of the case was that the assessee's dominant intention when he entered into that agreement to purchase the estate was to embark on a venture in the nature of trade.
2. that the Supreme Court has the power upon a case stated to reconsider the inference drawn by the Board of Review as to the assessee's intention only if such inference was based on a consideration of inadmissible evidence or after excluding admissible and relevant evidence or it was unsupported by legal evidence or if it was not a rational conclusion and was perverse and should therefore be set aside.

2. ***Ram Iswara v CIR* (CTC – Volume III)**

The assessee, was a proctor and his wife, resident at Hulftsdorf. On 3.3.51 his wife entered into an agreement with a Mrs. Thambyah to purchase her land 433 perches in extent situated in Alexandra Place and adjoining St. Bridget's Convent, Colombo. Rs. 45,000 was paid as a forfeitable deposit. The balance Rs. 405,000 was to be paid on or before 20.4.51. Soon after the agreement a sketch was prepared dividing the land into fourteen lots. One lot was reconvened to Mrs. Thambyah as agreed upon earlier. Two lots comprising 70 perches and two lots comprising road reservations were transferred to the Assessee's wife. The balance

nine lots were sold to others. In effect she made a net profit of Rs. 66,331 and paid only Rs.15,275 for the 70 perch allotment worth Rs. 87,040.

The Board of Review rejected the assessee's contention that the dominant intention of his wife to live near St. Birdget's Convent to facilitate her children's schooling.

Held

1. that the transaction as held by the Board was an adventure in the nature of trade.
2. that in examining the conclusion of the Board of Review on a question of mixed law and fact the Court had to examine whether the Board had applied the relevant legal principles correctly or not. The term "adventure in the nature of trade" postulates the existence of certain elements in the adventure which in law would invest in with the character of trade or business. The transaction will in other words be allied to transactions that constitute trade or business. Even an isolated transaction can satisfy the description of an adventure in the nature of trade. The total effect created on the mind of the court by all the facts and circumstances disclosed in a particular case will be the determining factor. The appeal was dismissed.

The facts accepted by the Board of Review establish that

1. The assessee or his wife had no money to pay even the deposit. The sum had to be borrowed.
2. The transaction had to be concluded between 3.3.51 and 21.4.51 a comparatively short period of time.
3. There was preparation, Organization and activity: within a few days of the agreement of 3.3.51 a sketch was prepared to be shown to prospective purchasers. Soon thereafter a survey plan was made dividing the land into 14 lots, twelve building sites and two roadways, the activity led to the maturing of the assets.
4. The quantity of extent purchased was far in excess of the alleged requirements of the assessee's wife.
5. There was considerable profit from the transaction within a short time, i.e. the presence of profit motive, which is a characteristic of trade.

3. ***Commissioner of Income Tax v C. S. De Zoysa*** **(CTC – Volume I)**

"Trade" – "Business" – Requirement of repetition of activity – Section 2, 6(1) (h) present 6(1) (j) of Income Tax Ordinance.

The assessee's wife owned a block of land and undivided shares in surrounding lands. These lands had been requisitioned during the war and the Admiralty had erected 10 hangers and some buildings. The assessee after obtaining the permission of the other co-owners and after giving them a certain sum for the surrender of their option to purchase and the right to damage compensation agreed to purchase nine of the hangers of Rs. 90,000. The assessee advertised for the sale of these hangars but was unsuccessful. He borrowed a sum of Rs. 45,000 from Senator Cyril de Zoysa on the understanding that one-fourth share of the profits of the sale of hangars was to be given to him. Subsequently the hangars and the buildings were sold. The amount of profit made by the assessee after deducting the expenses, the one-fourth share of the profits paid to Senator Cyril de Zoysa and the amount paid to the co-owners was fixed at Rs. 144,000. The assessee was assessed to income tax for the year 1948-49 and to profits tax on these profits for the year 1949. The Board of Review by a majority of two to one decided that the assessments should be disallowed. The Commissioner of Income Tax thereupon applied for a case stated. The question of law for decision was whether the sum of Rs. 144,000 earned by the assessee by the purchase and resale of the hangars fell within the ambit of section 6(1) (a) of the Income Tax Ordinance.

Held

1. that, for buying and selling to come within the ambit of the expression "trade" there must be some amount of repetition in the acts of buying and selling.
2. the expression "trade" coupled with such words as "carried on or exercised" makes it beyond question that there should be a repetition of acts of buying and selling to constitute "trades".
3. that the expression of "business" in section 6(1) (a) means an activity continuously carried on; and in this case it is an isolated transaction of sale wherein the appellant, sought to take advantage of the concession granted to owners of requisitioned land of purchasing the buildings erected thereon.
4. that an isolated transaction cannot have the characteristic of an adventure in the nature of a trade since it does not involve the repetition of activity. (This principle has been overruled by the Privy Council decision.)

4. ***Rutledge v CIR*** **(14 TC 490)**

A money lender who was also interested in a cinema co. while in Berlin was offered an opportunity of purchasing very cheaply a large quantity of toilet papers from a bankrupt German firm. He brought the paper to UK and found a purchaser for the whole quantity.

Held

Here one purchase and one sale the defense pointed out that this person did not have an agent as in Lord President Clyde said that (1) in buying a large quantity of toilet paper he entered upon a commercial adventure or speculation (2) The adventure was carried on the same way as any regular trade would do (3) that this adventure is in the nature of trade.

Lord Sands pointed out "the nature and quantity of the subject dealt with exclude the suggestion that it could have. One would need so much for private use. From beginning to end the intention was to buy and resell.

5. ***CIR v Livingstone and Others*** **(11 TC 538)**

In 1924 the respondents a ship repairer, a blacksmith and a fish sales employee purchased as a joint venture a cargo vessel with a view to converting it into a steam ship drifter and selling it. They were not connected in business and they had never previously bought a ship. Intensive repairs and alterations to the ship were carried out. The first two also were employed in their ordinary capacity in trade.

Lord President Clyde said "the test is whether the operations involved in it are of the same kind and carried on in the same way as those which are characteristic of ordinary trading in the line of business in which the venture was made. The respondents collected capital bought the secondhand vessel and converted it into a mark table drifter. These operators seem to be the same as those which characterize the trade of converting and refitting second hand articles for sale. Profit is not capital accretion.

Held

The transaction is an adventure in the nature of trade. In this case, an isolated purchase and sale of a ship by a black smith, a ship repairer and a fish sales employee was held to be trading as they embarked on activities to make the subject matter marketable.

6. ***IRC v Fraser*** **(1942) 24 TC 498**

In 1937 & 38 the respondent who was a woodcutter bought through an agent and resold whisky for £ 407. The whisky was sold also through a year in 1940 for £ 1131. This was his sole dealing in whisky. He had no special knowledge of the

trade and he did not take delivery of the whisky nor did whisky he have is blended or advertised.

Held

Lord President Normand "it would be extremely difficult to hold that a single transaction amounted to a trade, but it may be much less difficult to hold that a single transaction is an adventure in the nature of trade, but what is more important is the nature of the transaction with reference to the commodity dealt in. The purchase of a large quantity of whisky greatly in excess of what could be used for himself, his family and friends, a commodity which yields no pride of possession which cannot be turned to account except by a process of realization. I can scarcely consider it to be other than an adventure in a transaction in the nature of trade.

The decision was on the ground that when a person deals with a trading commodity such a whisky in bulk, in bond, which he has acquired merely for the purpose of re-sale and proceed to sell and there are no other material circumstances in the case that he engaged in trade and in the trade only and not in investment of capital.

7. ***CIR v Reinhold*** **(34 TC 389)**

The resplendent Director of a company bought 4 houses in January 1945 and sold them at a profit in 1947. He admitted that he had bought the property with a view to resale and had instructed his agents to sell whenever suitable opportunity arose.

Held

It was held that the fact that the property was purchased with a view of resale did not itself establish that the transaction was an adventure in the nature of trade.

Lord Carmont. "If the commodity purchased in the single transaction was not a kind normally used for investment, but for trading and if the commodity could not produce an annual return by retention in the lords of the purchaser than the conclusion may be reached the venture was a tardy one. If however the commodity is normally used for investment land, houses etc the inference is not so readily to be drawn for an admitted intention in regard to a single transaction to sell on the arrival of a suitable or selected time and does not warrant the same definite conclusion as regards trading or even that the transaction is in the

nature of trade I am satisfied that much more is required to show that the respondent has engaged in an adventure in the nature of trade".

8. ***Martin v Lawry*** **(11 TC 297)**

The purchase and sale of a large quantity of linen outside the ordinary occupation of the taxpayer was held to be a trading transaction as the subject matter of the purchase and sale and the methods adopted for the sale excluded the suggestion that it could have been disposed of otherwise than as a trading transaction.

Annuity

1. ***The Commissioner of Inland Revenue v J. M. Rajarathnam*** **(CTC – Vol III)**
Whether annual payments made under deeds of covenant are deductible annuities.

The respondent – assessee made two payments amounting to Rs. 3,000 to his two brothers under two deeds of covenant by which he had undertaken to pay each brother a sum of Rs. 1,500 annually for a period of seven years from the year ending 31st March, 1958, or during the residue of his life, whichever period shall be shorter.

He claimed these amounts as deductible annuities from his assessable income for the year of assessment 1958-59 under section 15(1) of the Income Tax Ordinance.

The deduction was disallowed and he appealed to the Commissioner under section 73(1) of the said Ordinance. At the hearing of the appeal the Deputy Commissioner disallowed the claim on the ground that the word 'annuity' in the United Kingdom Act covered annuities purchased by the expenditure of a capital sum and that payments under deeds of covenant would not be regarded in the United Kingdom Act for tax purposes as 'annuities' but as 'annual payments' and that as the Ceylon Ordinance did not contain the words 'or other annual payments' the payments in question were not deductible.

Thereafter the respondent's appeal to the Board of Review was dismissed on the grounds that the payments "were not attributable to any sources of income and were not therefore expenditure or of an income character".

Held

The respondent's appeal to the Supreme Court, however, was successful, it being held that right to receive recurring annual payments which are income in the hands of the payee can properly be described as an 'annuity' even through the

payee has not required the right by purchasing it for a capital sum but in some other way – (as for example by testamentary request or under a voluntary covenant) and that there is no warrant for putting on the word as used as used in the Ordinance which for putting on the word as used as used in the ordinance the limited meaning which the Deputy Commissioner put on it'.

Their Lordships of the Privy Council were in agreement with the Supreme Court decision that the payments under these deeds of covenant can fairly be described as 'annuities''.

Partnerships

1. ***A. A. Davoodbhoy v Commissioner General of Inland Revenue*** **(SLTC – Volume IV)**

Decision in Court of Appeal

Non-natural agreement creating a sub-partnership-Father and Children Agree to be partners in the profits and losses of the father in the main partnership business – Whether agreement was an artificial or fictitious transaction – Test of genuineness of the agreement.

The test of genuineness will be considerations such as

(a) The position between the parties – for example if there were losses would all the partners to the not notarial agreement have contributed their proportionate share to make good the losses. Where the children were virtually dependent on the father they could not have obtained the money to contribute to the losses.

(b) The conduct of the parties – children had not asked the father to form the sub-partnership.

(c) Knowledge – the children had no worthwhile knowledge of the content of the agreement.

It was held : The agreement was an artificial transaction.

The agreement was not for carrying on a separate business in partnership, but for sharing the father's share of the profits and losses in the firm of Abdulhassen Davoodbhoy. There cannot in law be a valid partnership if the agreement is merely for the purpose of sharing the profits and losses of one partner in another partnership without anything more.

Decision in Supreme Court

Inland Revenue Act Sections 79(7) and 52 – Agreement by partner to share with children, his profits of a business partnership – Whether agreement is artificial

and fictitious – Does it form a sub-partnership which is liable to be taxed. Does it result in a diversion of profits by overriding title. Is the assessee liable to be assessed for the entirety of the profits.

The appellant Abasbhoy Davoodbhoy was one of five partners of a firm carrying on business under the name of "Abdul Hassen Davoodbhoy" and was entitled to one fifth share of its profits. In order to provide for his children he entered into an agreement (A1) with them, whereby they agreed "to be partners in regard to the one fifth share of the profits and losses of the said Abasbhoy Davoodbhoy. "The agreement stated that the share of the capital and the goodwill in the said business which was the property of the appellant was to remain his separate asset. The only asset of this venture therefore was the one fifth share of the profits received by the appellant. The agreement A1 and the rights claimed under it were rejected by the Assessor in terms of section 79(7) of the Inland Revenue Act and the whole of the one fifth share of the profits was assessed as the Income of the appellant and not as the income of the parties to the agreement A1.

Appeals to the Commissioner General of Inland Revenue and the Board of Review were dismissed. On a case stated by the Board of Review the matter was heard by the Court of Appeal and answered against the appellant. The Court of Appeal granted the appellant leave to appeal to the Supreme Court as substantial questions of law were involved.

It was contended on behalf of the respondent that A1 was "artificial and fictitious", that it did not create a sub-partnership but was merely a family arrangement and that the one fifth share of the profits was the income of the appellant which should be assessed in terms of section 52 of the Inland Revenue Act, since A1 results in an application of income and not a diversion of same. It was argued that, for a diversion of income there must be a transfer of its source.

Held,

1. The agreement A1 is not "artificial and fictitious". It incorporates a family arrangement which is genuine and very common in our society. The accounts show that this agreement has been acted upon and profits divided accordingly. It cannot be rejected under section 79(7) of the Inland Revenue Act.
2. An arrangement to share profits only, can constitute in law, a partnership between the parties to the agreement, A1 created a "sub-partnership" which term is merely a convenient name used in law and in commercial circles to describe a partnership which is dependent on another partnership. Such an agreement is

perfectly valid in Civil law and must therefore attract the provisions of the Inland Revenue Act.

Special Note

However, now under the Inland Revenue Act "partnership" has been specifically defined as follows;

"partnership" means an association of two or more individuals or corporations carrying on business jointly for the purpose of making profit, irrespective of whether the association is recorded in writing;"

Therefore, any arrangement which falls within the above definition will be considered a valid partnership under the Inland Revenue Act.

Capital and revenue expenditure

1. ***Vallambrosa Rubber Co. Ltd. v Farmer*** **(05 TC 529)**

This Company had an estate in which in a particular year only 1/7th of the estate produced rubber. The balance 6/7th was immature. The assessor disallowed the expenditure incurred for 6/7 on the grounds.

i. the expenses cannot be charged, when there is no corresponding receipt.
ii. expenses on maintenance of immature area was capital.

Held: The judge pointed out that the first argument was defeated by its own absurdity, because if this was so a fruit grower will never be allowed to deduct the necessary expenses, without which he cannot raise the fruit.

On the question of Capital & Revenue, the expenses were necessary every year and I do not say that this consideration is absolutely final or determinative but is a rough way, I think it is not a bad criterion to say that capital expenditure is a thing that is going to be spent once and for all and income expenditure is a thing that is going to recourse every year. Therefore these expenses (weeding, salaries etc.) were of a revenue nature.

2. ***Hancock v General Reversionary & Investment Co. Ltd.*** **(7 TC 358)**

Deduction of lump sum payment to purchase and annuity equal in amount to pension payable to former employee. This was considered revenue – a lump sum was paid instead of a recurring series of annual payments. The fact that a lump sum was paid instead of recurring series of annual payments does not alter the character of the payment.

The lump sum payment here was made in replacement of an existing revenue liability for it merely compressed into one year a charge which was in its nature recurrent. It was a pension in another form; it is actuarially equivalent in value and it is identical in character and was a payment to meet a continuing demand which by itself is ordinary business expense.

3. ***Artherton v British Insulated & Helsby Cables Ltd*** **(10 TC 155)**

The company claimed a sum of £ 31,784 which it had contributed to form the nucleus of a Pension Fund established by a trust deed for the benefit of its clerical staff. This sum was actuarially ascertained to be necessary to enable past years of service of existing staff to rank for pension.

Held: To be capital nature

Lord Cave "when an expenditure is made not only once and for all, but with a view to bringing into existence and asset or any advantage for the enduring benefit of a trade, I think there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable, not to revenue, but to capital".

4. ***Theobald v Commissioner of Income Tax*** **(CTC – Volume I)**

Business of growing papaw trees to extract papain-Lease of lands with rent-Agreement to reforest or make permanent cultivation on termination of lease Temporary sheds erected on the land to house the drying ovens and temporary cooly lines to house the labourers – Claim for deduction of expenses incurred – Capital expenditure- Section 10 (c) of Income Tax Ordinance.

The appellant carried on the business of extracting papain from the papaw fruit. For that purpose he took on lease from the Crown and from private parties lands for which he paid no rent. In the case of Crown lands the agreement was to reforest them, but in the case of the private lands the agreement was to plant permanent agricultural plantation such as coconut & c. The lands were leased out free of rent.

For the purpose of extracting papain the appellant had to erect temporary sheds on the land to house the drying ovens and also cooly lines to house the labourers. On the expiration of the lease it was frequently found not worth while dismantling these structures and re-erecting them elsewhere and therefore they were surrendered to the lessors. In the year of assessment in question the appellant expended a sum of Rs. 6,512 on these sheds; he claimed a deduction of one half of this sum as an outgoing or expense.

Held

1. that the expenditure is incurred for the enduring benefit of the business, not only in relation to the particular land, but also in relation to his business generally, and is made once and for all.
2. that the expenditure in question is of "a capital nature" within the meaning of section 10 (c) of the Income Tax Ordinance and was not a permissible deduction under section 9.

5. ***Associated Portland Cement Manufacturing Co. v Kerr*** **(27 TC 103)**

At the end of 1939 the (69-year old) managing director and another (60-year old) director were due to retire. Both had extensive knowledge of and contacts in the cement industry. Both would be free, to set up in competition with the company. The company entered into agreements with directors where in exchange for payments of £20,000 to one and £10,000 to the other the retiring directors agreed not to compete with the company anywhere in the world. The £30,000 was included in the company's profit and loss account under the heading 'sundry special reserves'. The Master of the Rolls, Lord Greene, discusses the role of accountancy evidence and the means used to finance a purchase in determining the nature of the expenditure. Accountancy is not determinative and how the purchase was funded is immaterial. What matters is whether the expenditure results in the acquisition (modification or disposal) of a capital asset:

Held

The payment was held to be an expenditure of capital nature. The payment to the director was an expenditure made once and for all to bring into existences an advantage for enduring benefit of the trade. The advantage was the addition to the goodwill by buying off two potential competitors.

6. ***Mitchell v Noble*** **CTC – Volume I**

The company claimed to deduct the sum of £19,200 payable (by installments) to a retiring director.

The original directors were appointed for life so long as they held a qualifying number of shares, subject to dismissal forthwith for neglect or misconduct towards the company. A director so dismissed was only entitled to receive his salary then due and could be required to sell his shares to the other directors at par. The director would also have to surrender for cancellation certain notes issued by the company entitling him to participate in surplus profits.

Circumstances arose in 1920 and 1921 in which the company might possibly have been justified in dismissing one of the directors, but, to avoid publicity injurious to the company's reputation, it entered into negotiation with him for his retirement. He claimed £50,000 compensation, but a compromise was agreed. The director agreed to retire from the company, to transfer his 300 £1 shares to the other directors at par value (they were then worth considerably more) and to surrender his participating notes. The company agreed to pay him £19,200, and the directors to pay him £300 (expressed to be consideration for his shares), making together £19,500 (payable in five annual installments), which he agreed to accept in full satisfaction of all claims against the company or the directors.

Held: To be revenue expenditure – This was not made to secure an actual asset, but to continue as in the past.

Special Note:

Even though the said expense was not a capital nature expense, in terms of the Inland Revenue Act (Sri Lankan Tax Law), an expense shall be deducted under section 11 only when it is incurred in the production of income.

An expense should be directly relating to the income generating activity of the business and not remotely connected. Accordingly, this expense cannot be claimable under the Sri Lankan income tax law since it is remotely connected to the business and not closely connected.

7. ***Haughton Tea Company Limited v Commissioner of Income Tax*** **(CTC – Volume I)**

Planting of estate with budded rubber – Deterioration caused by use by a previous owner – Expenditure of a capital nature – Permissible deduction-Section 9(1) (c) and 10 (c) of income Tax Ordinance.

The assessee Company purchased Siriniwasa Estate in 1936 and replanted 5 acres with 'budded rubber' in 1936, 139 acres in 1937 and 100 acres in 1938. At first the Commissioner allowed the expenses incurred in replanting as a deduction in computing the profits of the years in question. At a later stage he made an additional assessment after deducting the expenditure incurred in replanting.

The assessee appealed to the Board of Review against the additional assessment but the Board held the view that such expenditure was capital expenditure under section. 10 (c) and that it did not come within the 'general words of section 9 (1), It was contended by the Company that the object of the outlay was

not to bring the estate into a better condition (i.e.) to effect an improvement but that the programme of replanting was the normal programme of a certain percentage of trees being planted each year. It was also contended by the Commissioner that it was the practice of the Income Tax Department to allow such expenditure as a deduction under section 9 (1) (c) but that in this case the allowance was not admissible to make up to the owner the deterioration caused by its use by a previous owner.

Held

(1) that the replanting took place, not to repair the neglect of years so as to enable the estate to yield a return, but as a precautionary measure inseparable from the running of a rubber estate on business lines and that therefore, the expenditure was a permissible deduction under section 9 (1) [c] of Income Tax Ordinance.

(2) The question of what is capital expenditure is one of fact which must be decided on available date.

It was held that the expenditure involved in replanting in the substitution of an asset subject to waste for another wasting asset, does not effect any improvement in an estate and that it may be regarded as an essential revenue expenditure for the purposes of maintaining a certain requisite level of productive efficiency.

8. ***Law Shipping Co Ltd v CIR*** **(12 TC 621)**

The company bought a second hand steamship, 'Duns Law', at a date when its four-yearly Lloyd's survey was overdue; exemption of the survey was granted pending completion of a voyage that was about to begin. Six months later the survey was made resulting in significant expenditure. The company admitted that part was capital but claimed the majority as repairs. The Special Commissioners only allowed the part of the repairs that was applicable to the period during which the company owned the ship. The Court of Session upheld the Commissioner's decision. Lord President Clyde explained that the capital cost of the ship was not restricted to the cost of acquisition from the previous owner but included the costs of making the ship seaworthy:

1. The purchase price of the ship was substantially less than if it had been in a fit state of repair.
2. The ship could not continue as a profit-earning asset without being repaired shortly after acquisition.
3. No evidence in Law Shipping that on sound commercial accountancy principles the deferred repairs could be charged as revenue expenditure.

Held

Repairs necessary at the time of purchase to render the subject matter of purchase serviceable fall to be added to the initial cost of the assets as the capital charge, and cannot be deducted in computing the profits. In this case, the vessel was not in a state to pass survey at the time of purchase and could not have been used by the purchaser without effecting the repairs.

9. ***Odeon Associated Theatres Ltd v Jones*** **(48 TC 257)**

The company carried on the trade of cinema owner and operator. During the Second World War the company purchased a number of theaters. Evidence was given that the purchase price of these theatres was not affected by their state of repair. From the beginning of the war until the early 1950s theatre building was prohibited, as was decorating and repair work except for small amount of essential maintenance, which was inadequate to keep the theaters in a proper state of repair. The company carried out the accumulated repair and claimed the full costs. The Special Commissioners found that the expenditure was properly charged to the company's profit and loss account in accordance with the principles of sound commercial accounting. Nevertheless the Special Commissioners disallowed the costs as "deferred repairs" following law shipping.

- The Purchase price of the cinemas was not depressed by their condition.
- The cinemas could and were in the 'as acquired' condition.
- Accountancy evidence figured large.

Held

Cost of repairs to four of the company's cinemas which was attributable to wear and tear before they were bought by the company was held to be deductible.

The decision on this case was made on the basis that the expenditure on repairs would be treated according to the principle of sound commercial accounting as revenue expenditure and there was no reason to doubt the accuracy of the treatment. Sir John Pennycuick Vise Chancellor said that one took expenditure as one found it when it was incurred, not spreading artificially over years when it was not incurred. Thus when an asset is brought into use in a trade as an asset which though old was suitable for use in the trade and was for sometime used in that trade but which has to be reconditioned to a state of repair better than it enjoyed when first brought into use. In such circumstances the expenditure is made with a view to enabling the asset to continue to be used in the trade and to earn the profits of the trade, the expenditure will be an expenditure of revenue and not for capital.

10. ***The National Mutual Life Association of Australia Ltd. V Commissioner of Income Tax*** **(CTC – Volume I)**

Ascertainment of profits of insurance companies-Contribution to Staff Superannuation Fund-Expenses of Head Office Revenue and capital expenditure- Premia-Section 42 of Income Tax Ordinance.

The appellant carries on a life insurance business, having its Head Office in Melbourne, in the State of Victoria, but it has a branch in Colombo through which it carries on a portion of its life assurance business.

Since 1917 the Company has paid pension to its employees out of its profits and reserves in accordance with a Staff Superannuation Scheme formulated at that time; in 1944 a Staff Superannuation Trust Fund was established by Deed and vested in Trustees. To the establishment of this Fund the Company during the period of assessment made an initial contribution of £ 150,000 being the amount found to be necessary for meeting the obligation under the Deed. This sum was paid in order to get rid of its pension liabilities and to fulfill its promise to its employees. The Company applied to the Commissioner of Income Tax for approval of the Fund so as to have the benefit of section 9(1) (g) of the Income Tax Ordinance but the application was refused. The appellant appealed to the Commissioner that a fair proportion of the sum of £150,000 should be taken into account as Head Office expenses.

It was held by the Board of Review that the Company's claim for approval of the Fund under section 9 (1) (g) was disallowed and therefore the deduction was prohibited under section 10. The question was whether any portion of the said sum of £150,000 is deductible from the appellant's profits for the year of assessment as being expenses of the appellant's Head Office under section 42(1).

Held

(1) that there was an existing liability on the part of the company to pay old age pensions to its employees and that the Company provided a lump sum in order to prevent annual sums having to be paid later and to be able to fulfill its promises to its employees; therefore the payment of the sum would be an ordinary business expense and that under section 42 (1) a fair proportion of the sum was deductible from the company's profits as expenses of the Head Office

(2) that the payment was not made in order to bring into existence a pension fund, and thus bring into existence an existence an advantage for the enduring benefit of the Company as in Atherton's case.

(3) that a payment spent once and for all may be capital expenditure, or may properly be chargeable against revenue expenditure as for instance the purchase of annuity for the benefit of an actuary who was retired.

(4) that it is section 42(1) alone which provide the basis for the ascertainment of the profits of a life insurance business, and that sections 9 and 10 which prescribe the permissible deductions are inapplicable in the case of insurance business.

Expenses incurred in production of profits & income

1. ***Hayley and Co. Ltd v The Commissioner of Inland Revenue*** **(CTC – Volume III)**

Income tax – Loss of monies by burglary – whether deductible from income as "out goings and expenses".

The assessee, a limited liability company carrying on the business of buying and exporting produce, specially rubber, kept considerable sums of money in the office safe. One night the safe was burgled and Rs. 96,075/= was stolen. The assessee's loss was reduced to Rs. 36,150/= by the recovery of Rs. 23,775/= by the Police and a payment of Rs. 36,150/= by way of an ex-gratia payment by the Insurance Company. The assessee claimed the loss under section 9(1) of the Income Tax Ordinance (Cap. 188) as an "outgoing".

Held : that the word" outgoings" is wide enough to cover losses, which are involuntary outgoings. The outgoings must to "incurred in the production of profits". The assessee's loss was deductible as being incidental to the business.

Special Note

The loss in this case was allowed to be claimed on the following grounds based in the previous Inland Revenue Acts.

(i) What is allowable for income tax computation is not only an expense, even outgoings also. Outgoings include involuntary outgoing also.

(ii) The outgoing should be incurred for the production of income. In this case the outgoing was allowed since it is incidental to the business.

(iii) The loss represents circulative capital and not fixed capital and therefore not a capital expenditure.

However, in terms of the Inland Revenue Act, No. 24 of 2017, the claim of outgoing is not recognized.

2. ***Commissioner of Inland Revenue v A.W. Davith Appuhamy*** **(CTC – Volume III)**

Litigation expenses- When deductible from profits of a business – Section 9 and 10 of the Income Tax Ordinance (Cap. 188)

The respondent successfully repelled the claims of some associates to have a share in a business called the Kandy Ice. Co. and he claimed deductions in respect of litigation expenses in the computation of profits for the three years ending 31st March, 1953, 31st March, 1954 and 31st March, 1955. The Board of Review upheld the argument for the respondent that the sums in question constituted expenditure incurred in the production of income. The Supreme Court dismissed the present appellant's claim.

Held

That a business must be considered as a distinct source of income so as to identify the receipts, expenditure and charges attributable to it and as the litigation expenses were in respect of an issue that would not have affected the profits of the business but only the respondent's share they cannot be deducted under section 9 of the Income Tax ordinance as outgoings incurred in the production of income. They are also disallowable under section 10 being monies not expended for the purposes of producing income.

3. ***Strong v Woodifield*** **(5 TC 215)**

A brewing company, which also own licensed houses, in which they carry on the business of Innkeepers, incur damages and costs to the amount of £1490 on account of injuries caused to a visitor staying at one of their houses by the falling in of a chimney.

Held

That the damages and costs were not allowable as a deduction in computing the company's profits for Income Tax purposes.

Lord Davy. "It is not enough that the disbursement is made in the course of or arise out of, or is connected with the trade, or made out of the profits of the trade. It must be made for the purpose of earning the profits".

In this case, damages payable for injury he sustained while in the hotel was held to be an expense unconnected with the trade and therefore not deductible.

Lord Loreburn "… the loss sustained by the appellant was not really incidental to their trade as innkeepers and fell upon them in the character not of as traders, but of householders."

4. ***Rajapakse v Commissioner of Income Tax*** **(CTC – Volume I)**

Deduction for expenses incurred in traveling by advocate – whether claim for traveling from chambers to Courts will come within section 10 (a) of the Income Tax Ordinance – Meaning of the term "place of business" with reference to an advocate-Question of law in case stated under section 74(2).

This was a case stated for the opinion of the Supreme Court under the provisions of section 74 of the Income Tax Ordinance, 1932.

The appellant is an advocate residing at Rosmead Place, Colombo, and practicing before the Supreme Court, at Hultsdorp.

He claimed deduction for the rent of the chambers in his house and the cost of traveling to and from chambers to the Supreme Court, sitting in its appellate capacity at Hulftsdorp.

He was allowed a deduction for the cost of traveling between his chambers and the outstation courts.

The Board of Review held that the deduction claimed was the cost of traveling between the residence and place of business within meaning of section 10 (a) of the Income Tax Ordinance and could not be allowed.

Held

1. That expenses incurred by an advocate in traveling from the premises in which he resides and has his chambers to the Supreme Court are not costs of traveling between his residence and place of business coming within the meaning of section (10) (a) of the Income Tax Ordinance.
2. Per Dalton J – that the Supreme Court is not a place of business of an advocate; per Dribeberg J – that the chambers of an advocate and the Courts are the places of business of an advocate; that therefore, his movement from one place of business to another does not come within the scope of section 10 (a)

Reasons for rejection of the returns

1. ***D.M.S. Fernando and Another v Mohideen Ismail*** **(04 CTC 156)**

Inland Revenue Act Section 96(3)(d) – Reuquirement of Statement of reasons in writing such requirement whether mandatory or directory – Failure to state reasons – consequences

The Respondent – Petitioner is a taxpayer who furnished a returnfor 1975/76. In the return he declared that his income was Rs. 88,915/-. However, the Assessor has information that he had done business with B.C.C. and that he had earned a gross such of Rs. 961,415/- After many interviews with the Assessor the taxpayer was warned that and assessment would be issued. The Assessor issued an assessment on 29.4.79 drastically reducing the amount claimed as expenses. The taxpayer appealed against this assessment to the Assessor.

In the meantime the Taxpayer applied to the Court of Appeal for a Writ to quash the assessment on the grounds that the Assessor had not given his reasons in writing for rejecting the return. The Court of Appeal granted the writ but the appellants appealed against the order.

Held,
(Sharvananda, J. and Wimalaratne. J, dissenting) The notice of assessment was null and void because the Assessor failed to obey a mandatory order to give his reasons in writing to the taxpayer for rejection of the return in terms of section 90C(3)(d) of the Inland Revenue Act. It is essential that an Assessor who rejects a Return should state his reasons and communicate them. His reasons must be communicated at or about the time he sends his assessment on an estimated income. Any later communication would defeat the remedial action intended by the amendment.

2. ***New Portman Ltd v W. Jayewardene and Others*** **(SLR – 307, Vol 1 of 1989)**

Section 115(3) – No reason stated for non Acceptance of Return of assessee

Where the assessor purporting to Act under section 115(3) informed the assessee "according to information available the statement of accounts furnished by you…… Does not reveal the correct profits".

Held

This was only a conclusion and not the reason for the conclusion. It therefore does not satisfy the requirements under section 115(3) proviso. The reason given must be intelligible and deal with the substantial points that have been raised.

Further, the assessor in rejecting the return had acted on "information available". He must communicate to the assessee the substance of information to such extent as to put the assessee in possession of full aprticulars regarding the case he is expected to meet and should give time and opportunity to meet it if possible. It is not necessary to disclose to the assessee the source of the information.

Meaning of plant

1. ***Thornhill v Commissioner of Income Tax*** **(CTC - Volume I)**

Income Tax – Tea Factory – Depreciation by wear and tear – outgoings and expenses – Deductions – Meaning of word "plant" – Allowance in respect of repair and renewal – Section 9 (1) (a), (1) (c) and 10 (c) of Income Tax Ordinance.

The appellant was a tea planter who converted his own green leaf into tea in his own estate. He carried on this business of his in a tea factory. He claimed an allowance of Rs. 8,893/- being the amount of depreciation in the value of the tea factory on his tea estate which was essentially used for the purposes of his "business". It was contended that the deduction was allowable under section 9(1) (a) being depreciation by "wear and tear of plant & c." or alternatively as an "outgoing" or "expense" incurred in the production of "income" under Section 9 (1).

Held

1. that the word "Plant" cannot be made to include the building or shell which contains any plant.
2. In ascertaining the income of a person from a tea estate, no allowance can be made for deprecation by wear and tear by natural decay in respect of a tea factory building employed in producing the income.
3. But allowance may be made under Section 9 (1) (c) on account of repair and renewal necessitated by constant use for the purposes.

2. ***Chelvanayakam v Commissioner of Income Tax*** **(S.C. 148 - (Inty))**

Income Tax – Advocate's purpose of Law Reports – Deduction of cost – Section 9 (1) (a) of Income Tax Ordinance.

The assessee-appellant, who is an advocate purchased a number of volumes of the Indian Appeal Law Reports and expended a sum of Rs. 354. He claimed that

sum must be deducted for the purpose of arriving at his at his taxable income. This claim was disallowed by the Commissioner and the Board of Review.

Held

1. that the cost of a set of Law reports purchased by an advocate in not a permissible deduction as an "Outgoing and expense under section 9 (1) (a) of the Income Tax Ordinance.
2. that the books which a lawyer consults on his shelves could not be included in the expression "plant and machinery"