



Case Law (Legal Precedent)

Key learning outcome

- **Understanding the Facts and principles of decided tax cases**
 - Importance of Case Law and applicability
- **Application of Case Law**

Case Law (Legal Precedent)

Introduction

1. It is not practicable to draft a comprehensive Act (with all Information and interpretation)
Geo economic changes, Cultural changes, Advancement of Technology etc..
2. If there is an ambiguity in a particular law, it is required to interpret the law
3. Duty of the judicial system is to interpret the law and maintain the check and balances (Justice)
4. Decision of the Court held previously are considered as “Ruling” and such decision is followed by the court for similar cases (Facts)

Case Law (Legal Precedent)

Introduction

1. It is not practicable to draft a comprehensive Act (with all Information and interpretation)
Geo economic changes, Cultural changes, Advancement of Technology etc..
2. If there is an ambiguity in a particular law, it is required to interpret the law
3. Duty of the judicial system is to interpret the law and maintain the check and balances (Justice)
4. Decision of the Court held previously are considered as “Ruling” and such decision is followed by the court for similar cases (Facts)

Case Law (Legal Precedent)

1. Case Law relevant for profit from employment
 - i. Crib Vs Commissioner of Income Tax
 - ii. Sutherland Vs Commissioner of Income Tax
 - iii. Kanagasabapathy Vs Commissioner General of Inland Revenue

Case Law (Legal Precedent)

Case Law relevant for profit from employment

i. Crib Vs Commissioner of Income Tax

Background:

Crib was employed as a Superintendent. He went for a urgent medical treatment and employer granted him financial aid (Rs. 10,000/-). This was recorded as a special bonus for his exceptional long term services. Assessor has issued an assessment considering the amount as an employment benefit to the employee. It was contended by the tax payer

“The amount paid by the employer as a special bonus with the intension of providing financial aid for an employee’s medical treatment”

The court held that:

- That the payment was made to the employee as a personal gift
- Motive of the payment is long term service but not the consideration
- Appellant shall not be penalized for the choice of the word used intentionally or by omission by the party making the payment.
- That income cannot be treated as an employment benefit/part according to the tax law prevailing at that time

Case Law (Legal Precedent)

Case Law relevant for profit from employment

ii. Sutherland Vs Commissioner of Income Tax

Background:

Mr. Sutherland was an employee and he pass away. Employer wants to made a payment to Mrs. Sutherland and children to repatriate. The amount paid by the employer to wife of the deceased employee (Late Mr. Sutherland) was recognized as leave pay. An assessment was issued stating that the said sum should be treated as an employment benefit of the deceased employee and subject to income tax in the hand of late employee's wife as she shall be the executor to the deceased employee.

"The amount paid to wife of the deceased employee (Late Mr. Sutherland) to passage to home country, was recognized as leave pay by the employer."

The court held that:

- Nature of payment and the word used for the payment has no relation to the category of payment.
- Even if the said payment is made to that person, it is similar to a form of personal gifted money, and
- She cannot be treated as executor to the deceased employee.
- That income cannot be treated as an employment benefit/part according to the tax law prevailing at that time

Case Law (Legal Precedent)

Employment income

Leave pay

Other payment, including gift received in respect the employment

Payment for redundancy, loss or termination of employment

Case Law (Legal Precedent)

Case Law relevant for profit from employment

iii. Kanagasabapathy Vs Commissioner General of Inland Revenue

Background:

Mr. Kanagasabapathy was an employee and money paid to him under a Health Insurance scheme as reimbursement of medical expenses incurred for his mother. An assessment was issued stating that the said sum should be treated as benefit from employment and subject to income tax in the hand of the employee.

“The amount paid by a health insurance scheme to employee as a reimbursement of medical expenditure of an associate person ”

The court held that:

- Receipt must be derived by reason of his employment.
- It shall be a receipt which an employee receives in the course of his employment
- The test is whether the payment made by way of reimbursement of medical expenses incurred in respect of his mother was received by him in return for acting as or being an employee.
- That income cannot be treated as an employment benefit/part according to the tax law prevailing at that time

Case Law (Legal Precedent)

Payment providing discharge or reimbursement of expenditure incurred by the individual or an associate of the individual

Payment or transfer to another person for the benefit of the individual or an associate person of the individual

Discharge or reimbursement of the person's dental, medical or health insurance expenses whether the benefits is available all full time employee in the same grade of the service, on equal terms

Case Law (Legal Precedent)

2. Case Law relevant for profit and income arising in or derived from Sri Lanka
 - i. Anglo- Persian Oil Co., Ltd Vs Commissioner of Income Tax
 - ii. Chivers & Sons Ltd Vs Commissioner of Income Tax

Case Law (Legal Precedent)

Case Law relevant for profit and income arising in or derived from Sri Lanka

- i. Anglo- Persian Oil Co., Ltd Vs Commissioner of Income Tax

Background:

The Company, Anglo- Persian Oil Co., Ltd registered in the United Kingdom. Anglo- Persian Oil Co., (Ceylon) Ltd is the agent in Sri Lanka. Anglo- Persian Oil Co., Ltd (UK) enters into contract at London with ship owners whose ships at various ports including Sri Lanka. Both companies were in oil trade business

Anglo- Persian Oil Co., Ltd (UK) had no business places but stored its oil with its agent, Anglo- Persian Oil Co., (Ceylon) Ltd (SL) at Colombo. Shipping companies binds itself to buy oil from the Anglo- Persian Oil Co., Ltd (UK). Estimated oil requirement (in tons) of each vessels at all the name ports, minimum and maximum requirement to be delivered are stated in their respective agreements. Separate agreement was signed for each delivery. Payment is to be made at London by cash upon the receipt of agent (SL) of the Company (UK). The Company (UK) has the right to suspend or cancel the agreement in the event shipping company failed to make payment. Oil stoke belong to the Company (UK) were stored at tanks build by the agent (SL). When a ship arrived to Colombo, representative of the agent (SL) visited the Ship, ascertained the oil requirement and delivered. Delivery and acceptance note was got to sign by the shipping company and sent to the Company (UK)

"Sales Contract signed outside Sri Lanka "

The court held that:

- The ownership of the goods passed to the shipping company at the time of the contract was signed at London.
- The Ceylon company, merely an agent for the delivery of oil. Agent is actually effect the contract and was not instrumental in effecting the contract
- Merely delivery of oil did not bring the profit under the category of "profit arising in or derived from Sri Lanka"
- It is not a contract which have been entered into as a result of efforts of agent in Ceylon of a foreign principle
- Non resident has no profit and income arising in or derived from Sri Lanka

Case Law (Legal Precedent)

Case Law relevant for profit and income arising in or derived from Sri Lanka

ii. Chivers & Sons Ltd Vs Commissioner of Income Tax

Background:

The Company, Chivers & Sons Ltd registered in England. The Company (ENG) manufactured goods in England and supplied to F X Pereira & Sons, a firm in Ceylon. The Firm (SL), maintained stocked, display samples, maintain intend department which arranged for the supply on orders from local dealers of goods shipped by the Company (ENG) and others, canvassed the goods of the Company (ENG), received a commission for orders forwarded to the Company. However, there was no formal agreement and also there was no agent of Chivers & Sons Ltd in Sri Lanka. No commission was received by the Firm (SL) for orders directly placed with the company (ENG) by the dealers in Sri Lanka.

The court held that:

- The Ceylon Firm, maintained inventory, display samples, maintain intend department which arranged for the supply on orders from local dealers of goods shipped by the Company (ENG), canvassed the goods of the Company (ENG).
- Received a commission for orders forwarded to the Company.
- The Firm (SL) is acting on behalf of the seller who is outside the country
- Non resident has a profit and income arising in or derived from Sri Lanka

Case Law (Legal Precedent)

Nonresident liability

Agent

Case Law (Legal Precedent)

3. Case Law relevant for income from any other sources
 - i. Wickramasinghe Vs Commissioner of Income Tax

Case Law (Legal Precedent)

Case Law relevant for income from any other sources

i. Wickramasinghe Vs Commissioner of Income Tax

Background:

Mr. Wickramasinge was an ex-civil Servant and a Government pensioner. He was appointed as a Arbitrator by the Colombo municipal council. He was engaged in the arbitration proceeding connected with the purchases made by the council of the Colombo Tramways. This was the only proceeding he appeared and received a fee of Rs. 15,000/- for acting as arbitrator.

“Casual and Non recurring nature”

The court held that:

- There was a possibility of acting as similar capacity and receiving income for the service.
- It was not a profit within the meaning of casual and non-recurring nature and therefore liable for income tax

Case Law (Legal Precedent)

Income from other source

1. Casual

The word '**Casual**' means 'subject to or produced by chance, accident, fortuitous, coming at uncertain times

Examples:- income from a crossword competition.

2. Non-recurring Income: These are the incomes which arise at an irregular interval.

Examples:- sale of assets, insurance settlement, one-time sale, etc

Case Law (Legal Precedent)

4. Case Law relevant for expenses incurred in production of income

- i. Heyley and Co Ltd Vs Commissioner of Inland Revenue
- ii. Rajapakse Vs Commissioner of Income Tax
- iii. Commissioner of Inland Revenue Vs A. W. Davith Appuhamy
- iv. Strong Vs Woodifield

Case Law (Legal Precedent)

Case Law relevant for expenses incurred in the production of income

i. Heyley and Co Ltd Vs Commissioner of Inland Revenue

Background:

The Company, Heyley and Co Ltd registered company in Sri Lanka engaged in the business of buying and exports of rubber based products. Kept considerable amount of money at a office safe to meet the next day purchase requirement. Safe was burgled and Rs. 96,075/- was stolen. Part of the stolen money (Rs. 23,775/-) recovered by the police and part (Rs. 36,150/-) was paid by the Insurance company. Loss (Rs. 36,150/-) was claimed as an outgoing.

An assessment was issued considering the loss of money due to theft shall not be an expenditure and disallowable expenditure for tax.

"Expenditure incurred/outgoing in the production of income"

The court held that:

- Expenditure has a broader meaning, and the loss can be treated as an expense/outgoing which is incurred while making a profit
- Therefore, involuntary losses can be treated as expenses (losses due to flood, natural calamities, fire, theft) and allowable for tax purposes.
- That said loss cannot be considered as capital expenditure as it is represented the working capital

Case Law (Legal Precedent)

Case Law relevant for expenses incurred in the production of income

ii. Rajapakse Vs. Commissioner of Inland Revenue

Background:

Mr. Rajapaksa is an advocate residing at Rosmead Place, Colombo and practicing before the Supreme Court at Hultsdrop. He has a chamber in his house and claimed expenditure for Rent and cost of travelling from Chamber to the Supreme court, sitting in his appellate capacity at the court.

An assessment was issued considering the expenses incurred by the advocate at the computation of professional income. Expenses related to travelling from his Chamber at the residential place (home office) to travel from home to the court complex. Revenue Officer stated that the said expenses connected with personal travel and disallowable expenses.

"Domestic expenditure or not"

The court held that :

- Chamber and the court complex can be considered business place and traveling between
- two places of business. The said expenditure, travelling cost, can be treated
- as incurred in the production of income (business) and shall be an allowable expenses
- The expenses incurred by the plaintiff in the form of business travelling expenditure