



Strategic Level – CA Sri Lanka

Strategic Tax Planning (SL - 25 - 4) –
Tutorial 09

Case Law – Nonresident tax liability

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PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

- Sec 72 (1) of the Inland Revenue Act no 24 of 2017 - Source directly to be included and amounts to be deducted.

An amount directly included in calculating the income shall be a source in Sri Lanka where it consists of

- a) Consideration received, a gain or an amount, referred to in paragraph (b), (c) or (d) of subsection (2) of section 6 or paragraph (b) of subsection (2) of section 7 to the extent to which a domestic asset or domestic liability is involved; and
- b) a payment that has a source in Sri Lanka.

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

- Sec 72 (2) of the Inland Revenue Act no 24 of 2017
- An amount directly deducted in calculating income shall have a source in Sri Lanka where it consists of
 - a) to the extent to which it relates to domestic assets, an allowance referred to in subsection (1) of section 13 or section 16 or expenditure referred to in subsection (1) of section 14;
 - b) a loss from the realisation of a capital asset or liability of a business or an investment asset where the asset or liability involved shall be a domestic asset or domestic liability; and
 - c) a payment that has a source in Sri Lanka (Section 73)

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

Anglo – Persian Oil Company Co. Ltd Vs Commissioner of Income Tax

Chivers & Sons Ltd Vs Commissioner of Income Tax

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

1) Anglo – Persian Oil Company Co. Ltd Vs Commissioner of Income Tax

i. Summary of the Case:

The Anglo-Persian Oil Company Ltd., incorporated in the United Kingdom, entered into contracts in London to supply fuel oil to shipowners whose vessels called at Colombo. Delivery was made in Colombo by the company's local agent, but payment was effected in London. The company had no place of business in Ceylon, though its agent stored oil locally. The Commissioner of Income Tax assessed the company on the basis that profits arose in or were derived from Ceylon under the Income Tax Ordinance No. 2 of 1932 (Sections 5 and 34). The dispute was whether such profits were taxable in Ceylon.

ii. Based for the assessment:

- Delivery of oil occurred in Ceylon.
- The company-maintained stock through its agent in Colombo.
- Therefore, profits were considered to have arisen in or derived from Ceylon under **Section 5** (income arising in Ceylon) and **Section 34** (contracts concluded through efforts of agents in Ceylon)

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

1) Anglo – Persian Oil Company Co. Ltd Vs Commissioner of Income Tax

iii. Appellant's argument :

- Contracts were made in London, and payments were received there.
- The oil was not produced in Ceylon.
- The agent in Ceylon was not instrumental in negotiating or concluding contracts; its role was limited to storage and delivery.
- Therefore, profits did not arise in or derive from Ceylon and were not taxable under Sections 5 or 34

iv. Court's Decision:

The Supreme Court held:

- Profits from these contracts were **not liable to income tax in Ceylon**.
- Mere delivery of goods in Ceylon does not constitute profits arising in or derived from Ceylon.
- Section 34 applies only where contracts are secured through efforts of local agents, which was not the case here.

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

1) Anglo – Persian Oil Company Co. Ltd Vs Commissioner of Income Tax

v. Basis for the Decision:

- The source of profits was the contracts made in London, not the act of delivery in Ceylon.
- The company had no business operations in Ceylon beyond delivery.
- The agent's role was purely logistical, not commercial in securing contracts.
- Interpretation of Sections 5 and 34 of the Income Tax Ordinance confirmed that income must originate from activities within Ceylon to be taxable.

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

2) Chivers & Sons Ltd Vs Commissioner of Income Tax

i. Summary of the Case:

Chivers & Sons Ltd, a UK-based company, manufactured goods in England and shipped them to Ceylon. A local firm, F.X. Pereira & Sons, stocked and sold these goods, displayed samples, canvassed for orders, and arranged supply through indents placed by local dealers. The local firm earned commissions on orders processed through them and guaranteed payment to Chivers if local dealers defaulted. There was no formal agency agreement, but the Commissioner assessed Chivers & Sons for income tax in Ceylon under Sections 5(1)(b) and 34 of the Income Tax Ordinance No. 2 of 1932.

ii. Based for the assessment:

- The local firm being instrumental in selling goods of Chivers in Ceylon.
- Profits from these sales were deemed to arise in or be derived from Ceylon under Section 5(1)(b).
- Section 34 clarified that a non-resident person is liable if business is transacted in Ceylon through an agent

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

2) Chivers & Sons Ltd Vs Commissioner of Income Tax

iii. Appellant's argument :

- Indents were accepted in England; contracts were concluded outside Ceylon.
- F.X. Pereira & Sons acted on behalf of local buyers, not Chivers, and were mere stockists.
- Section 34 is explanatory and does not create liability; profits did not arise in Ceylon.
- Therefore, income was not taxable under Section 5(1)(b).

iv. Court's Decision:

The Supreme Court held:

- The local firm was instrumental in selling goods of Chivers in Ceylon.
- Profits from such sales were liable to income tax in Ceylon under Section 5(1)(b).
- Even without a formal agency agreement, the local firm acted on behalf of Chivers for tax purposes.

PROFIT AND INCOME ARISING IN OR DERIVED FROM SRI LANKA

2) Chivers & Sons Ltd Vs Commissioner of Income Tax

v. Basis for the Decision:

- The local firm's activities (stocking goods, canvassing orders, arranging supply) constituted business transacted in Ceylon.
- Section 34 broadened the interpretation of "acting on behalf" to include such instrumental roles.
- The source of profits was linked to operations in Ceylon, making them taxable locally.