

IN THE PRIVY COUNCIL P.C.A. No.16 of 1968

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

DONALD JOHN RANAWEERA Appellant

- and -

CHARLES BERTRAM WICKRAMASINGHE
(Deputy Commissioner of Inland
Revenue) Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal against a Decree of the
Supreme Court of Ceylon, dated the 29th
September, 1966, dismissing the Appellant's
Application in the Supreme Court for a Mandate
in the nature of a Writ of Certiorari under
Section 42 of the Courts Ordinance for the
forwarding to the Supreme Court of the record
of proceedings wherein the Respondent had
imposed penalties upon the Appellant under
Section 80(1) of the Income Tax Ordinance
20 (C.242) and the quashing of the Respondent's
Order, dated the 21st April, 1964, made
therein.

p.13

2. The main points for determination on
this appeal (with which is connected P.C.A.
No.17 of 1968) are :-

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- Annexure (A) Whether or not Section 80 of the Income Tax Ordinance is ultra vires the Ceylon (Constitution) Order in Council, 1946, inasmuch as it empowers the Commissioner of Inland Revenue, who is the holder of a paid office and is not appointed by the Judicial Service Commission, to impose penalties on a person who makes an incorrect return of his income for purposes of income tax and thus confers upon him the right to exercise powers which are judicial. 10
- Ex.G. pp.29-32 (B) Whether or not, in the circumstances of this case, the Respondent's Order, dated the 21st April, 1964 (Ex.G), made under the said Section 80, was in accordance with law and natural justice.
3. Portions of the Income Tax Ordinance (C.242) the Ceylon (Constitution) Order in Council, 1946 (hereinafter also referred to as "the Constitution") and the Courts Ordinance, relevant to this appeal and to the connected appeal P.C.A.No.17 of 1968, will be found in an Annexure hereto. 20
4. The facts, briefly stated, are as follows : -
- pp.1-4 In his Application (or Petition) for a Mandate in the nature of a Writ of Certiorari, dated the 19th September 1964, filed in the Supreme Court of Ceylon, to which the Deputy Commissioner of Inland Revenue (Mr. C.B.E. Wickramasinghe) was made Respondent, the Appellant, with reference to income tax payable by him for the years of assessment 1950/51-1957/58 and profits tax for the years 1950-56, said that against certain assessments made for those years by the Department of Inland Revenue he had appealed to the Commissioner of Inland Revenue and had forwarded at the same time his own returns of his income and profits. He then set out the following sequence of events :- 30 40
- p.1, 11.33-38

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The Department did not consider that the appreciation of his capital had been satisfactorily accounted for but the dispute was eventually adjusted by an Agreement, dated the 27th March, 1961, made under Section 69(2) of the Income Tax Ordinance. On the 3rd August, 1962, the Deputy Commissioner of Inland Revenue, acting under Section 80(1) of the said Ordinance, called upon the Appellant to show cause why a penalty should not be imposed upon him for each of the years of assessment 1955/56, 1956/57 and 1957/58. In regard to these penalties meetings took place between the Appellant's legal advisers and the Deputy Commissioner of Inland Revenue and the latter "called upon him" to pay to the Commissioner of Inland Revenue, in respect of the penalties he had incurred for the years 1950/51 to 1957/58, the sum of Rs.450,000 which, by an Agreement dated the 3rd July 1963, he agreed to do. Despite the said Agreement, the Commissioner, by a Notice, dated the 10th February 1964, called upon him to show cause why he should not pay a penalty under the Section 80(1) of the Income Tax Ordinance. The Appellant was subsequently granted, at his own request, a month's time within which to show cause.

p.2, 11.1-11

p.2, 11.12-23

p.2, 11.24-28

p.3, 11.7-9

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5. The Appellant's Petition (or Application) continued as follows : -

"12. Thereupon the Respondent without fixing a date for an inquiry into the matter and without intimating to the Petitioner the date of the inquiry made Order" [dated the 21st April 1967] "condemning the Petitioner to pay penalties in terms of Section 80(1), of the Income Tax Ordinance (C.242) as follows :-

p.3

Ex.G. pp.29-32

"For the year 1955/56 .. Rs.180,000/-

p.32

"For the year 1956/57 .. Rs. 50,000/-

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"For the year 1957/58 .. Rs.120,000/-

.....

p.3

"13. The Petitioner states that the said Order is erroneous in that it was not open to the Respondent in law to impose penalties on the Petitioner in respect of the years 1955/56, 1956/57 and 1957/58 inasmuch as the Respondent had already called upon the Petitioner to pay a penalty of Rs.450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58.

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p.3

"14. The Petitioner states that the said Order is a nullity and was made in violation of the principles of natural justice without affording the Petitioner an opportunity at an enquiry to prove that he was not guilty of fraud as contemplated by Section 80(1) of the Income Tax Ordinance. The Petitioner further states that, by his letter dated the 3rd March, 1964, the Petitioner has intimated to the Respondent that he has cause to show and a duty was cast on the Respondent to fix an inquiry and intimate to the Petitioner the date of such inquiry so as to enable the Petitioner to place before the Respondent all material available on his behalf and to call evidence."

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6. On his argument that Section 80(1) of the Income Tax Ordinance necessitated the exercise of judicial powers in the imposition of penalties, the Appellant said :

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p.3, 1.36
to
p.4, 1.5

"15. The Petitioner further states that the provisions of Section 80(1) of the Income Tax Ordinance (C.242) empowering the Respondent to impose a penalty on the Petitioner is null and void by reason of the fact that the Respondent is exercising judicial powers in so doing and the Respondent is not empowered in law to exercise judicial power inasmuch as the

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Respondent is the holder of a paid office, and was not appointed by the Judicial Service Commission to exercise powers under Section 80(1) of the Income Tax Ordinance (C.242)".

7. The Appellant prayed for, inter alia -

10 "A Mandate in the nature of a Writ of Certiorari ordering and directing the Respondent to forward to Your Lordships' Court the record of the proceedings imposing the aforesaid penalties on the Petitioner and to quash the said Order." p.4, 11.13-17

8. In replying, the Respondent (Senior Deputy Commissioner of Inland Revenue) said, in his Affidavit, dated the 13th November 1964 inter alia, as follows : - pp.9-11

20 "5. The Petitioner's lawyers interviewed me on the 30th March 1963. At the said interview the question of considering the four Notices 'B', 'C', 'D' and 'R' together was discussed. p.10, 11.6-14

"It was ultimately agreed by the Petitioner's lawyers that the Petitioner would pay a sum of Rs. 450,000/- as compounding penalty.

30 "6. In accordance with this agreement, the Petitioner signed the agreement marked 'E' in my presence, on the 3rd July, 1963. A certified copy of the said agreement is annexed hereto marked 'R.3'.

.....

"8. The Petitioner failed to make payment in accordance with the said agreement marked 'R.3'. The Commissioner of Inland Revenue wrote to the Petitioner on the 13th December, 1963, regarding his failure to comply with the terms of the p.10, 11.18-26

Record

said agreement. The Petitioner was given time finally to make payment before the 27th December, 1963. A certified copy of the office copy of the said letter is annexed hereto marked 'R.5'."

p.11, 11.1-15 The Respondent said further that the Appellant had failed to show cause, even by an extended date, as to why an Order, under Section 80(1) of the Income Tax Ordinance, should not be made against him. 10

As to the said Agreement, dated the 3rd July 1963, the Respondent said that the Petitioner had not been "called upon" to make the said payment (as he had alleged in his Petition) but that he had agreed to do so "in consideration of proceedings not being taken against him in respect of penalties incurred under the provisions of the Income Tax Ordinance." 20

pp.8-9 9. In a separate Affidavit, dated the 13th November 1964, Mr. L. Piyasena (also a Deputy Commissioner of Inland Revenue) referred to the adjustment of the dispute (following the Appellant's objections to the assessments made by the Inland Revenue Department) by an Agreement, dated the 27th March, 1961, which had been signed by both the Appellant and himself. The last paragraph of this Agreement (Ex.R.1) was as follows : - 30

p.20, 11.16
-22 "I have been informed that the settlement of my appeals on the above basis is without prejudice to the powers the Commissioner has to take action against me under the penal provisions of the Income Tax Ordinance in respect of any offences committed by me in connection with my returns for the years 1950/51 to 1957/58 and the information I have furnished in connection with the inquiries made into the appeals for these years." 40

10. The Appellant's Application came up for hearing in the Supreme Court before a Bench consisting of H.M.G. Fernando S.P.J. and Abeysondere J. who, on the 29th September 1966, dismissed it. The Application in the connected Appeal (P.C.A.No.17 of 1968) was heard at the same time and suffered a similar fate. In neither case did the learned Supreme Court Judges consider it necessary to give reasons for their decision.

p.13.

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The decision of the Appellant's Counsel not to present arguments before the Supreme Court in view of a recent decision of the Supreme Court in another case which was totally against the line of reasoning and the submissions he would have to present in support of the Appellant's case, is referred to in paragraph 12 of the Case for the Respondents in the connected appeal, P.C.A. No.17 of 1968.

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11. A Decree in accordance with the decision of the learned Judges of the Supreme Court in this case was drawn up on the 29th September, 1966, and against the said Decree this appeal is now preferred to Her Majesty in Council, the Appellant having obtained Leave to Appeal by Orders of the Supreme Court, dated the 26th October, 1966, and the 3rd June, 1967.

p.13

pp.15-16,18

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In the Respondent's respectful submission, this appeal should be dismissed, with costs throughout, for the following among other

R E A S O N S

1. BECAUSE the appointment of the Respondent by the Public Service Commission qualified him to exercise the powers conferred by Section 80(1) of the Income Tax Ordinance and the imposition of penalties thereunder on the Appellant was

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the result of the normal and lawful exercise of administrative powers statutorily conferred.

2. BECAUSE the imposition of the said penalties did not involve the exercise of any judicial powers, being no more than the application by an administrative authority of sanctions of a remedial character in accordance with the law of Ceylon. 10
3. BECAUSE in the circumstances of this case it cannot reasonably be said that there was any contravention of the rules of natural justice, the Appellant having been given every opportunity to show cause against the proposal to impose penalties upon him and having failed to take advantage of the same.
4. BECAUSE in so far as the Appellant's claim was based upon his assertion that the Respondent was not properly appointed the action was misconceived for in the circumstances a Mandate in the nature of a Writ of Certiorari was not the appropriate remedy. 20
5. BECAUSE the decision of the Supreme Court was right and its decree ought to be affirmed.

E. F. N. CHILLIEN

R. K. HANDEE

A N N E X U R E

INCOME TAX ORDINANCE (Ch.242)

10 68(3) Where a person has not furnished a return of income and the Assessor is of the opinion that such person is chargeable with tax, he may estimate the amount of the assessable income of such person and assess him accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return.

20 73 (S.69 in Chapter 188, Legislative Enactments, 1938 Edition)(1) Any person aggrieved by the amount of an assessment made under this Ordinance or by the amount at which any property has been valued for the purpose of any capital gains may within thirty days from the date of the notice of such assessment appeal to the Commissioner by notice of objection in writing to review and revise such assessment....

(2) On receipt of a valid notice of objection under sub-section (1) the Commissioner may cause further inquiry to be made by an Assessor, and if in the course of such inquiry an agreement is reached as to the amount at which the appellant is liable to be assessed, any necessary adjustment of the assessment shall be made.

30 74(1) For the purpose of hearing appeals in the manner hereinafter provided, there shall be a Board of Review (hereinafter referred to as "the Board") consisting of not more than twenty members who shall be appointed from time to time by the Minister. The Members of the Board shall hold office for a term of three years but shall be eligible for reappointment.

(2) There shall be a Clerk to the Board who shall be appointed by the Minister.

(3) There shall be a Legal Adviser to the Board who shall be appointed by the Board.

(4) Three or more Members of the Board shall be nominated by the Minister and summoned by the Clerk to attend meetings at which appeals are to be heard. At such a meeting a quorum shall consist of two Members.

(5) At the request of the Commissioner, the Clerk to the Board shall summon a meeting of the whole Board. At such a meeting a quorum shall consist of five Members.

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(6) The remuneration of the Members of the Board, the Clerk, and the Legal Adviser shall be fixed by the Minister with the concurrence of the Minister of Finance.

75(1) Any appellant, or the authorized representative of any appellant, who is dissatisfied with the determination by the Commissioner of an appeal under section 73, may declare his dissatisfaction with that determination. Such declaration shall be made orally immediately after the announcement by the Commissioner of his determination or shall be communicated in writing to the Commissioner within one week from the date of such announcement.

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(2) Where the appellant has declared or communicated his dissatisfaction in accordance with sub-section (1), the Commissioner shall, within one month of the determination of the appeal, transmit in writing to the appellant or his authorized representative his determination and reasons therefor.

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(3) Within one month of the transmission of such written determination and reasons by the Commissioner, the appellant may give notice of appeal to the Board. Such notice shall not be entertained unless

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it is given in writing to the Clerk to the Board and is accompanied by a copy of the Commissioner's written determination, together with a statement of the grounds of appeal therefrom.

10 (4) Save with the consent of the Board and on such terms as the Board may determine the appellant may not, at the hearing by the Board, rely on any grounds of appeal other than the grounds stated in accordance with sub-section (3), and may not adduce any evidence other than evidence adduced at the hearing of the appeal before the Commissioner.

20 77(7) At the hearing of the appeal the Board may, subject to the provisions of section 75(4), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance relating to the admissibility of evidence shall not apply.

30 79 Where no valid objection or appeal has been lodged within the time limited by the Chapter against an assessment as regards the amount of the assessable income assessed thereby, or where the amount of the assessable income has been agreed to under section 73(2) or where the amount of such assessable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income:

40 Provided that nothing in this Chapter shall prevent an Assessor from making an assessment or additional assessment for any year of assessment which does not involve reopening any matter which has been determined on appeal for the year.

80(1) Where in an assessment made in respect of any person the amount of income assessed exceeds that specified as his

income in his return and the assessment is final and conclusive under section 79, the Commissioner may, unless that person proves to the satisfaction of the Commissioner that there is no fraud or wilful neglect involved in the disclosure of income made by that person in his return, in writing order that person to pay as a penalty for making an incorrect return a sum not exceeding two thousand rupees and a sum equal to twice the tax on the amount of the excess. 10

(2) Any person in respect of whom an order is made under sub-section (1) may, within twenty-one days after the notification of the order to him, appeal therefrom in writing to the Board of Review. The appeal shall state the grounds of objection to the order.

(3) The provisions of section 77 shall as far as possible apply to the hearing and disposal of any appeal under the preceding provisions of this section. The Board of Review may confirm, reduce, increase or annul the penalty imposed by the order of the Commissioner from which an appeal is made, but any increase of such penalty shall not be in excess of the maximum amount which the Commissioner may impose under sub-section (1) as such penalty. 20

(4) Where in respect of any person's return of income a penalty is imposed on that person under this section, he shall not be liable to a prosecution for an offence relating to that return under paragraph (a) of sub-section (2) of section 90 or under paragraph (a) of sub-section (1) of section 92. 30

90(1) Every person who -

(a) fails to comply with the requirements of a notice given to him under any of the following sections or subsections: 40
26(1), 30(2), 44(1) 45(1), 57D(2), 58(1), 58(3), 58(4)(a), 58(4)(b), 59(1), 59(2), 60, 61 or 62; or

(b) fails to attend in answer to a notice or summons issued under sections 58(4)(b), 73(5), or 77(6) or having attended fails without sufficient cause to answer any questions lawfully put to him; or

(c) fails to comply with the requirements of sections 44(4), 45(3), 57D(5), 58(2), 64(1), 81(10), or 83(2)

10 shall be guilty of an offence and shall for such offence be liable on summary trial and conviction by a Magistrate to a fine not exceeding five hundred rupees.

(2) Every person who without reasonable excuse:

(a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return, either on his own behalf or on behalf of another person or a partnership; or

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(b) makes an incorrect statement in connection with a claim for a deduction or allowance under Chapter V or Chapter VI or Chapter VIIA; or

(c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership,

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shall be guilty of an offence and shall for such offence be liable on summary trial and conviction by a Magistrate to a fine not exceeding two thousand rupees, or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment and, in addition to such punishment, to pay a sum equal to double the amount of tax which has been undercharged in consequence of such incorrect return, statement,

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or information, or would have been so

undercharged if the return, statement or information had been accepted as correct.

(3) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within five years after the expiration thereof.

(4) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder. 10

92(1) Any person who -

- (a) omits from a return made under this Ordinance any income which should be included; or
- (b) makes any false statement or entry in any return made under this Ordinance; or
- (c) makes a false statement in connexion with a claim for a deduction or allowance under Chapter V or Chapter VI or Chapter VIIA; or 20
- (d) signs any statement or return furnished under this Ordinance without reasonable grounds for believing the same to be true; or
- (e) gives a false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance; or 30
- (f) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or

(g) makes use of any fraud, art, or contrivance whatsoever, or authorizes the use of any such fraud, art, or contrivance,

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and thereby evades or attempts to evade tax or assists any other person to evade or to attempt to evade tax shall be guilty of an offence, and shall for each such offence be liable on summary trial and conviction by a Magistrate to a fine not exceeding the total of five thousand rupees and treble the amount of tax for which he, or as the case may be the other person so assisted, is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment of either description for any term not exceeding six months, or to both such fine and imprisonment.

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(2) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

THE CEYLON (CONSTITUTION) ORDER
IN COUNCIL, 1946

("The Constitution")

53(1) There shall be a Judicial Service Commission which shall consist of the Chief Justice, who shall be the Chairman, a Judge of the Supreme Court, and one other person who shall be or shall have been, a Judge of the Supreme Court. The members of the Commission, other than the Chairman, shall be appointed by the Governor-General. 10

55(1) The appointment, transfer, dismissal and disciplinary control of judicial officers is hereby vested in the Judicial Service Commission.

(2) Any judicial officer may resign his office by writing under his hand addressed to the Governor-General.

(3) Every judicial officer appointed before the date on which this Part of this Order comes into operation and in office on that date shall continue in office as if he had been appointed under this Part of this Order. 20

(4) The Judicial Service Commission may, by Order published in the Gazette, delegate to the Secretary to the Commission the power to authorize all transfers, other than transfers involving increase of salary, or to make acting appointments in such cases and subject to such limitations as may be specified in the Order. 30

(5) In this section "appointment" includes an acting or temporary appointment and "judicial officer" means the holder of any judicial office but does not include a Judge of the Supreme Court or a Commissioner of Assize.

COURTS ORDINANCE

42 The Supreme Court or any Judge thereof, at Colombo or elsewhere, shall have full power and authority to inspect and examine the records of any court, and to grant and issue, according to law, mandates in the nature of writs of mandamus, quo warranto, certiorari, procedendo, and prohibition, against any District Judge, Commissioner, Magistrate or other person or tribunal.

And whenever it shall appear to the Supreme Court or to any Judge thereof, at Colombo or elsewhere -

- (a) that a fair and impartial trial cannot be had in any particular court or place; or
- (b) that some question of law of unusual difficulty is likely to arise; or
- (c) that a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same; or
- (d) that it is expedient on any other ground,

the said court or such Judge thereof as aforesaid may make order upon such terms as to payment of costs or otherwise as such court or Judge may deem fit, for the transfer of any prosecution, matter, or thing depending before the Supreme Court in its original jurisdiction from any circuit to any other circuit, or to any other place in the same circuit, or to any other court, or for the transfer of any cause, suit, action, prosecution, matter or thing depending in any court other than the Supreme Court to any

other such court, anything in Chapter XIV of the said Criminal Procedure Code or any other enactment to the contrary notwithstanding; and in every such case the court to which any such cause, suit, action, prosecution, matter, or thing shall be so transferred shall take cognizance thereof, and have power and jurisdiction for the hearing, trial, and decision of the same as fully and effectually to all intents and purposes as if such court had originally such power and jurisdiction. Every transfer of any such cause, suit, action, prosecution, matter or thing as in this section mentioned shall be made after application by motion, which shall be supported by affidavit setting out the grounds on which it is based: 10

Provided that the Supreme Court, in making an order for transfer under this section, may, if it thinks fit, direct that the court to which such cause, suit, action, prosecution, matter, or thing is transferred shall call all or any of the witnesses who have been examined before the court from which the transfer is made, and take their evidence afresh. 20

E.F.N. GRATIAEN.
R.K. HANB00

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LONDON, E.C.3.