

31, 1969

31

No **16 OF 1968**

Supreme Court of Ceylon,
Application No. 317 of 1964.

Application for a Mandate in the
nature of a Writ of Certiorari
under Section 42 of the Courts
Ordinance.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

DONALD JASON RANAWEERA of No. 96, Mac Carthy Road, Colombo 7.
PETITIONER-APPELLANT.

And

CLAUDE BERTRAM EMMANUEL WICKRAMASINGHE, Deputy Commissioner of
Inland Revenue, Department of Inland Revenue, Colombo *RESPONDENT*

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 MAR 1970
25 RUSSSELL SQUARE
LONDON, W.C.1.

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BETWEEN

DONALD JASON RANAWEERA of No. 96, Mac Carthy Road, Colombo 7.
PETITIONER-APPELLANT.

And

CLAUDE BERTRAM EMMANUEL WICKRAMASINGHE, Deputy Commissioner of
Inland Revenue, Department of Inland Revenue, Colombo *RESPONDENT*

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## RECORD OF PROCEEDINGS

  
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No. 1

Application for a Mandate in the Nature of a Writ of Certiorari under Section 42 of the Courts Ordinance.

(i) Petition of D. J. Ranaweera.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance.

D. J. Ranaweera of 96, Mac Carthy Road, Colombo 7.

10

PETITIONER

vs.

S.C. No. 317/34

C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, Department of Inland Revenue, Colombo.

.RESPONDENT.

To:

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 19th day of September 1964.

20

The Petition of the Petitioner abovenamed appearing by Dharmadasa Wijemanne and Joseph Bertram Puvimanasinghe, practising in partnership in Colombo under the name style and firm of "DHARMADASA WIJEMANNE & COMPANY" and their assistants Lakshmi Mangala Fernando and Harilal Susantha Fernando, his Proctors states as follows:-

1. The Petitioner is a person assessed by the Commissioner of Inland Revenue to pay Income Tax on his income inter alia for the years of assessment 1950/51, 1951/52, 1952/53, 1953/54, 1954/55, 1955/56, 1956/57, 1957/58.

30

2. The Respondent is the Deputy Commissioner of Inland Revenue duly appointed under the Income Tax Ordinance (Cap. 242) and is vested with all the powers of the Commissioner of Inland Revenue under the said Ordinance.

3. The Department of Inland Revenue made certain assessments in respect of the Petitioner's income tax for the years of assessment 1950/51-1957/58 and in respect of profits tax for the years 1950-1956.

4. Thereafter the Petitioner appealed to the Commissioner of Inland Revenue against the said assessments and attached to the said appeal returns of his income and profits for the said years of assessment.

No. 1 Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance]

(i) Petition of D.J. Ranaweera 19. 9. 64

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari under
Section 42 of
the Courts
Ordinance;

(i) Petition of
D.J. Ranawera
19. 9. 64

—Continued

5. After consideration of the said returns the Department of Inland Revenue took up the position that there was an unaccountable appreciation in the capital position of the petitioner for the period 1st April 1949 to 31st March 1957

6. Several interviews took place between the Petitioner's legal advisers and the officers of the Department of Inland Revenue and the dispute between the petitioner and the Department of Inland Revenue was adjusted by an agreement entered into by the petitioner under Section 69 (2) of the Income Tax Ordinance (Cap. 242). The Petitioner attaches herewith marked "A" a copy of the said agreement 10 dated 27th March 1961.

7. On or about 3rd day of August 1962 the respondent in the exercise of the powers under Section 80(1) of the Income Tax Ordinance (Cap.242) called upon the Petitioner to show cause why a penalty should not be imposed on the Petitioner under Section 80(1) of the Income Tax Ordinance (Cap.242), for each of the years of assessment 1955/56, 1956/57 and 1957/58. The Petitioner attaches hereto copies of the said notices marked "B", "C" and "D."

8. The Petitioner and his legal advisers met the respondent in response to the said notices and the respondent called upon the 20 petitioner to pay to the Commissioner of Inland Revenue a sum of Rs. 450,000/- in respect of the years 1950/51 to 1957/58. The Petitioner attaches herewith marked "E" copy of the said agreement.

9. Despite the said agreement the respondent issued a notice on the petitioner dated 10th February 1964 calling upon him to show cause why the petitioner should not be called upon to pay a penalty in terms of Section 80(1) of the Income Tax Ordinance (Cap.242). The Petitioner attaches hereto marked "F" a copy of the said notice.

10. Upon receipt of the said notice Messrs. Dharmadasa Wijemanne & Co., Proctors for the Petitioner wrote to the Commissioner of 30 Inland Revenue as follows:-

"The Commissioner of Inland Revenue,
Department of Inland Revenue,
Colombo.

3. 3. 1964

Dear Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 AND 1957/58.

Reference your letter of the 10th February 1964 on the above subject we write on instructions from Mr D. J. Ranawera to state that he has cause to show.

Mr. M. Tiruchelvam Q. C., who has been retained to place this matter before you has unfortunately taken ill and is in Hospital. We therefore request that a month's time may be granted to enable Counsel to meet you.

Yours faithfully
Sgd. D. Wijemanne & Co."

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Certiorari under
Section 42 of
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(i) Petition of
D.J. Ranaweera
19. 9. 64

—Continued

11. Junior Counsel handed the said letter to the Commissioner of Inland Revenue who informed Junior Counsel that a month's time was given to the petitioner.

10 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 condemning the Petitioner to pay penalties in terms of Section 80(1) of the Income Tax Ordinance (Cap.242) as follows:-

For year 1955/56	Rs. 180,000/-
For year 1956/57	Rs. 50,000/-
For year 1957/58	Rs. 120,000/-

The Petitioner attaches hereto marked "G" a copy of the said order.

20 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 in as much 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.

30 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 inquiry 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 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.

15. The Petitioner further states that the provisions of Section 80(1) of the Income Tax Ordinance (Cap. 242) empowering the respondent to impose a penalty on the petitioner is null and void by reason of

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(i) Petition of
D.J. Ranaweera
19. 9. 64

—Continued

the fact that the respondent is exercising judicial powers in so doing and the respondent is not empowered in law to exercise judicial power in as much as the 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 (Cap.242).

16. The Petitioner in these premises is entitled to apply to Your Lordships' Court for 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. 10

WHEREFORE THE PETITIONER PRAYS THAT YOUR LORDSHIPS' COURT BE PLEASED:—

(a) to issue 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:

(b) for costs; and

(c) for such other and further relief as to Your Lordships' Court shall seem meet. 20

Settled by:-

Mr. S. Sittampalam
Mr. M. Tiruchelvam Q. C.,
Advocates.

Sgd. D. Wijemanne & Co.
Proctors for Petitioner.

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a Mandate in
the nature of a
Writ of
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Section 42 of
the Courts
Ordinance

(ii) Affidavit
of D. J.
Ranaweera
9. 9. 64

No. 1

Application for a Mandate in the nature of a Writ of
Certiorari under Section 42 of the Courts Ordinance

(ii) Affidavit of D. J. Ranaweera

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate 30
in the nature of a Writ of Certiorari under Section
42 of the Courts Ordinance.

D. J. Ranaweera of 96, Mac Carthy Road, Colombo 7.
Petitioner.

Vs

C. B. E. Wickremasinghe, Deputy Commissioner of
Inland Revenue, Department of Inland Revenue,
Colombo.

Respondent.

I, DONALD JASON RANAWEERA of No. 96, Mac Carthy Road,
Colombo 7, do hereby solemnly sincerely and truly declare and affirm
as follows:-

1. I am the Petitioner abovenamed.

2. I am a person assessed by the Commissioner of Inland Revenue
10 to pay Income Tax on my income inter alia for the years of
assessment 1950/51, 1951/52, 1952/53, 1953/54, 1954/55, 1955/56, 1956/57,
1957/58.

3. The Respondent is the Deputy Commissioner of Inland Revenue
duly appointed under the Income Tax Ordinance (Cap. 242) and is
vested with all the powers of the Commissioner of Inland Revenue
under the said Ordinance.

4. The Department of Inland Revenue made certain assessments
in respect of my income tax for the years of assessment 1950/51 -
1957/58 and in respect of profits tax for the years 1950 - 1956.

20 5. Thereafter I appealed to the Commissioner of Inland Revenue
against the said assessments and attached to the said appeal returns
of my income and profits for the said years of assessment.

6. After consideration of the said returns the Department of Inland
Revenue took up the position that there was an unaccountable
appreciation of the capital position of me for the period 1st April
1949 to 31st March 1957.

7. Several interviews took place between my legal advisers and
the officers of the Department of Inland Revenue and the dispute
between me and the Department of Inland Revenue was adjusted by an
30 agreement entered into by me under Section 69(2) of the Income Tax
Ordinance (Cap. 242). I attach herewith marked "A" a copy of the
said agreement dated 27th March 1961.

8. On or about 3rd day of August 1962 the respondent in the
exercise of the powers under Section 80(1) of the Income Tax
Ordinance (Cap. 242) called upon me to show cause why a penalty
should not be imposed on me, under Section 80(1) of the Income
Tax Ordinance (Cap. 242) for each of the years of assessment 1955/56,
1956/57 and 1957/58. I attach hereto copies of the said notices
marked "B", "C" and "D"

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Application for
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Writ of
Certiorari under
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the Courts
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(ii) Affidavit
of D. J.
Ranaweera
9. 9. 64

—Continued

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari under
Section 42 of
the Courts
Ordinance

(ii) Affidavit
of D. J.
Ranaweera
9. 9. 64

—Continued

9. I and my legal advisers met the respondent in response to the said notices and the respondent called upon me to pay to the Commissioner of Inland Revenue a sum of Rs. 450,000/- in respect of the years 1950/51 to 1957/58. I attach herewith marked "E" copy of the said agreement.

10. Despite the said agreement the respondent issued a notice on me dated 10th February 1964 calling upon me to show cause why I should not be called upon to pay a penalty in terms of Section 80 (1) of the Income Tax Ordinance (Cap. 242). I attach hereto marked "F" a copy of the said notice. 10

11. Upon receipt of the said notice Messrs. Dharmadasa Wijemanne & Co. Proctors for me wrote to the Commissioner of Inland Revenue as follows:-

"The Commissioner or Inland Revenue 3. 3. 1964
Department of Inland Revenue,
Colombo.

Dear Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 AND 1957/58

Reference your letter of the 10th February 1964 on the above subject we write on instructions from Mr. D. J. Ranaweera to state **20** that he has cause to show.

Mr. M. Tiruchelvam Q. C., who has been retained to place this matter before you has unfortunately taken ill and is in Hospital. We therefore request that a month's time may be granted to enable Counsel to meet you.

Yours faithfully,
Sgd. D. Wijemanne & Co."

12. Junior Counsel handed the said letter to the Commissioner of Inland Revenue who informed Junior Counsel that a month's time was given to me. 30

13. Thereupon the Respondent without fixing a date for an inquiry into the matter and without intimating to me the date of the inquiry made order condemning me to pay penalties in terms of Section 80(1) of the Income Tax Ordinance (Cap. 242) as follows:-

For year 1955/56	Rs. 180,000/-
For year 1956/57	Rs. 50,000/-
For year 1957/58	Rs. 120,000/-

I attach hereto marked "G" a copy of the said order.

14. I state that the said order is erroneous in that it was not open to the respondent in law to impose penalties on me in respect of the years 1955/56, 1956/57 and 1957/58 in as much as the respondent had already called upon me to pay a penalty of Rs. 450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58.

15. I state that the said order is a nullity and was made in violation of the principles of natural justice without affording me an opportunity at an inquiry to prove that I was not guilty of fraud as contemplated by Section 80(1) of the Income Tax Ordinance. I further state that by my letter dated 3rd March 1964 I have intimated to the respondent that I have cause to show and a duty was cast on the respondent to fix an inquiry and intimate to me the date of such inquiry so as to enable me to place before the respondent all material available on my behalf and to call evidence.

16. I further state that the provisions of Section 80(1) of the Income Tax Ordinance (Cap. 242) empowering the respondent to impose a penalty on me 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 in as much as the 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 (Cap. 242).

17 I am in these premises entitled to apply to Your Lordships Court for 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 me and to quash the said order.

No. 1
Application for
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Writ of
Certiorari under
Section 42 of
the Courts
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(ii) Affidavit
of D. J.
Ranaweera
9. 9. 64

—Continued

Read over signed and affirmed)
30 to at Colombo on this 9th day) Sgd. D. J. Ranaweera
of September 1964)

Before Me
Sgd. Illegibly.
A Justice of the Peace

7. The Order of the Respondent abovenamed, C. B. E Wickremasinghe, Deputy Commissioner of Inland Revenue, dated 21st. April, 1964 and annexed to the Petition marked "G" was the subject of an appeal to the Board of Review constituted under the provisions of the Income Tax Ordinance. The Board of Review by its Order dated 6th October, 1964 has disallowed the said Appeal.

No. 2
Affidavit of
L. Piyasena,
Deputy Com-
missioner of
Inland Revenue,
13.11.64
—Continued

Signed and affirmed to by the deponent)
Lenaduwalokuge Piyasena at Colombo on)
this 13 day of November, 1964... ..)

Sgd. L. Piyasena
BEFORE ME,

Sgd. H. Deheragoda
JUSTICE OF THE PEACE
for the Island of Ceylon.

10

No. 3

Affidavit of C. B. E. Wickramasinghe Senior Deputy Commissioner of Inland Revenue.

No. 3
Affidavit of
C. B. E.
Wickrama-
singhe, Senior
Deputy Com-
missioner of
Inland Revenue
13.11.64

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance.

D. J. Ranaweera of 96, MacCarthy Road, Colombo-7.
.....Petitioner.

S. C. APPLICATION

vs.

No. 317 of 1964... C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, Department of Inland Revenue, Colombo... ..Respondent.

I, CLAUDE BERTRAM EMMANUEL WICKRAMASINGHE, being a Roman Catholic, make oath and say as follows:-

1. I am the Senior Deputy Commissioner of Inland Revenue in the Department of Inland Revenue.

30 2. I have read the Petition and Affidavit of the Petitioner abovenamed.

3. On a consideration of all the matters contained in the files of the Petitioner abovenamed, in the Department of Inland Revenue, I issued the notices marked "B", "C" and "D", and annexed to the petition, on the petitioner abovenamed, in respect of the years of assessment 1955/56; 1956/57; 1957/58 respectively.

No. 3
Affidavit of
C. B. E.
W.ckrama-
singhe, Senior
Deputy Com-
missioner of
Inland Revenue
13.11.64
—Continued

4. At the same time, I issued on the Petitioner a notice under Section 92(1) of the Income Tax Ordinance (Cap.242), in respect of the years of assessment 1950/51; 1951/52; 1952/53; 1953/54; and 1954/55. A certified copy of the office copy of the said notice is annexed hereto marked "R2".

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 "R2" together, was discussed. It was ultimately agreed by the Petitioner's lawyers that the Petitioner would pay a sum of Rs. 450,000/- as compounding penalty. 10

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 "R3"

7. The notice referred to in the said agreement marked "R3" was issued on the Petitioner on 5th July, 1963. A certified copy of the office copy of the said notice is annexed hereto, marked "R4"

8. The Petitioner failed to make payment in accordance with the said agreement marked "R3". The Commissioner of Inland Revenue wrote to the Petitioner on the 13th December 1963 regarding his 20 failure to comply with the terms of the 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 "R5"

9. The Petitioner failed to make payment in accordance with the terms of the said letter "R5".

10. In view of the failure of the Petitioner to comply with the terms of the said agreement marked "R3". I wrote to the Petitioner on the 10th February, 1964 intimating to him that I proposed making an order against him under Section 80(1) of the Income Tax Ordinance, 30 and giving him an opportunity to show cause against the making of such order, before the 3rd March, 1964. A certified copy of the said letter is marked "F" and annexed to the Petition.

11. I am aware that S. Sittampalam, Advocate interviewed S. Sittampalam, Commissioner of Inland Revenue on 3. 3. 64. I am also aware that as a result of the said interview, a further month's time to show cause against an order being made, was allowed. The letter marked 'R6' and annexed to the affidavit of S. Sittampalam, Commissioner of Inland Revenue, was seen by me on the 3rd March, 1964.

12. No cause was shown even by the extended date allowed by the Commissioner of Inland Revenue.

13. I made the order, marked "G", annexed to the Petition on the 21st April 1964. The said order was made by me after a consideration of all the material contained in the files of the Petitioner in the Department of Inland Revenue.

14. Up to the time of my making the order marked "G", annexed to the Petition, I received no communication whatsoever from the Petitioner or his lawyers.

10 15. With reference to the averments in paragraphs 8 and 13 of the Petition I state that the Petitioner was at no time called upon to make a payment of Rs. 450,000/-. The Petitioner agreed to pay this sum of money in consideration of proceedings not being taken against him in respect of penalties incurred under the provisions of the Income Tax Ordinance.

Signed and Sworn to by the deponent)
Claude Bertram Emmanuel Wickramasinghe) Sgd.
at Colombo on this 13th day of November.) C. B. E. Wickramasinghe
1964.....)

20

BEFORE ME,
Sgd. H. Deheragoda
JUSTICE OF THE PEACE
for the Island of Ceylon.

No. 4

**Affidavit of S. Sittampalam, Commissioner of Inland Revenue
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance.

D. J. Ranaweera of 96, MacCarthy Road, Colombo 7.
.....*Petitioner.*

Vs

C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, Department of Inland Revenue, Colombo .. *Respondent*

30

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No. 317 of 1964

No. 3
Affidavit of
C. B. E.
Wickrama-
singhe, Senior
Deputy Com-
missioner of
Inland Revenue
13.11.64
—Continued

No. 4
Affidavit of
S. Sittampalam
Commissioner
of Inland
Revenue—
13.11.64

No. 4
Affidavit of
S. Sittampalam
Commissioner
of Inland
Revenue -
13.1164
—Continued

I, SANGARAPILLAI SITTAMPALAM, not being a Christian, solemnly, sincerely, and truly affirm and declare as follows:-

1. I am the Commissioner of Inland Revenue of the Department of Inland Revenue.

2. I have read the Petition and Affidavit of the Petitioner abovenamed.

3. I wrote the letter "R5", annexed to the affidavit of the Respondent abovenamed C. B. E. Wickramasinghe, Deputy Commissioner of Inland Revenue.

4. S. Sittampalam, Advocate, interviewed me on the 3rd March, 1964. 10
On that occasion he handed to me the letter marked "R6" annexed hereto, and made application to me, for further time for Counsel for the Petitioner to meet me, in order to show cause against the action proposed in the letter marked "F", annexed to the petition.

5. On the representation made to me by S. Sittampalam, Advocate and in accordance with the request made in the said letter "R6", I allowed the application made, for a further month's time, to enable Counsel to meet me. I made a contemporaneous note of the said interview on the said letter. The said letter was thereafter referred to the Respondent abovenamed C. B. E. Wickramasinghe, Deputy 20
Commissioner of Inland Revenue.

6. No representations were made on behalf of the Petitioner nor was any communication received from or on behalf of the Petitioner, thereafter, in respect of the action proposed in the said letter marked "F", annexed to the Petition.

Signed and affirmed to by the deponent)
Sangarapillai Sittampalam at Colombo) Sgd/S. Sittampalam.
on this 13th day of November, 1964.....)

Before Me,
Sgd/H. Deheragoda 30
JUSTICE OF THE PEACE
for the Island of Ceylon

No. 6
Application for
Conditional
Leave to Appeal
to the Privy
Council-
26.10.66

No. 6

**Application for Conditional Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application for Conditional Leave to Appeal to Her Majesty the Queen-in-Council under the Appeals (Privy Council) Ordinance.

D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7
..... *Petitioner*

S. C. No. 317/64
S. C. Application
No. 442/66

vs

C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, Department of Inland Revenue, Colombo. ... *Respondent*

And:-

D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7.
..... *Petitioner-Appellant.*

vs.

C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, Department of Inland Revenue, Colombo... *Respondent.*

On this 26th day of October 1966. 20

The Petition of the Petitioner appellant abovenamed appearing by Dharmadasa Wijemanne and Joseph Bertram Puvimanasinghe, practising in partnership in Colombo under the name style and firm of "WIJEMANNE & CO." and their assistant Charles Witharana, his Proctors states as follows:-

1. That feeling aggrieved by the judgment order and decree of this The Honourable the Supreme Court of the Island of Ceylon pronounced on the 29th day of September 1966 the Petitioner Appellant is desirous of appealing therefrom to HER MAJESTY THE QUEEN IN COUNCIL. 30

2. The said judgment is a final judgment and the matter in dispute in the appeal amounts to or is of the value of Rs. 5,000/- or upwards and/or the appeal involves directly or indirectly a claim or question to or respecting property or a civil right amounting to or of the value of Rs. 5,000/- or upwards and/or the question involved in the appeal is one which by reason of its great public importance or otherwise ought to be submitted to HER MAJESTY IN COUNCIL for decision.

3. On the 10th day of October 1966 the Petitioner Appellant has in terms of Rule 2 of the Schedule to The Appeals (Privy Council) Ordinance given due notice of this application to the Respondent in the following terms:-

No. 6
Application for
Conditional
Leave to Appeal
to the Privy
Council-
26.10.66

10 "Take notice that I, Donald Jason Ranaweera of No. 96 Mc Carthy Road, Colombo, the Petitioner in the above styled application will in accordance with the Appeals (Privy Council) Ordinance apply to the Honourable the Supreme Court of the Island of Ceylon for leave to appeal to Her Majesty the Queen-in-Council against the judgment and order of the Supreme Court pronounced on the 29th day of September 1966. The application for Conditional Leave will be filed in the Supreme Court within 30 days from the said judgment and order.

Sgd. D. J. Ranaweera
Petitioner.

Sgd. Wijemanne & Co.
Proctors for Petitioner

Colombo, this 10th day of October 1966."

4. The said notice was sent to the Respondent by (a) ordinary post, and (b) Registered post and (c) Telegram and (d) delivered by hand.

20 WHEREFORE THE PETITIONER APPELLANT PRAYS that Your Lordships' Court be pleased to grant:

- (a) conditional leave to appeal against the said Judgment, order and decree of this Court dated the 29th day of September 1966 to Her Majesty the Queen in Council;
- (b) costs and such other and further relief as to this Court shall seem meet.

Sgd. Wijemanne & Co.
*Proctors for Petitioner
Appellant.*

30

No. 7

Minute of Order granting Conditional Leave to appeal to the
Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

No. 7
Minute of Order
granting Con-
ditional Leave
to Appeal to the
Privy Council-
26.1.67

No. 7
Minute of Order
granting Con-
ditional Leave
to Appeal to the
Privy Council-
26.1.67

—Continued

S. C. Application D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7.
No. 317/64. *Petitioner-Appellant*
(Writ) vs
S. C. Application C. B. E. Wickremasinghe, Deputy Commissioner of
No. 442/66. Inland Revenue, Department of Inland Revenue,
(Conditional Leave) Colombo. *Respondent.*

The application of Donald Jason Ranaweera of No. 96, Mc Carthy Road, Colombo 7, for Conditional Leave to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 29th day of September, 10 1966 in S. C. Application No. 317/64, having been listed for hearing and determination before the Honourable Vaitilingam Manicavasagar, Puisne Justice and the Honourable George Terrence Samarawickrame, Q. C. Puisne Justice, in the presence of H. W. Jayewardena Esquire., Q.C. with S. Sithambalam Esquire, Advocates for the Petitioner-Appellant and P Naguleswaran Esquire, Crown Counsel, for the Respondent, order has been made by Their Lordships on the Twenty-Sixth day of January, 1967 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

Sgd. N. Navaratnam 20
Registrar of the Supreme Court.

No. 8
Application for
Final Leave to
Appeal to the
Privy Council-
19.2.67

No. 8
Application for Final Leave to Appeal to the
Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to Her Majesty the Queen in Council under the Appeals (Privy Council) Ordinance (Cap. 100).

S.C. Application 30
No. 442/66 (for
Conditional Leave to Appeal) D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7.
S.C. Application vs. *Petitioner Appellant.*
No. 317/64.

C. B. E. Wickremesinghe, Deputy Commissioner of
Inland Revenue, Department of Inland Revenue,
Colombo Respondent.

No. 8
Application for
Final Leave to
Appeal to the
Privy Council-
19.2.67

—Continued

On this 19th Day of February 1967.

The Petition of the Petitioner - Appellant abovenamed appearing by Dharmadasa Wijemanne and Joseph Bertram Puvimanasinghe, practising in partnership in Colombo under the name style and firm of "WIJEMANNE & Co." and their assistant Charles Witharana, his Proctors states as follows:-

10 1. The Petitioner-Appellant, on the 26th day of January 1967, obtained conditional leave to appeal to the Privy Council (in S. C. Application No. 442/66) against the Judgment and Decree pronounced by Your Lordships' Court on the 29th day of September 1966 in S.C. Application No. 317 of 1964.

2. The Petitioner-Appellant has, in compliance with the conditions on which such leave was granted, deposited with the Registrar of the Supreme Court a sum of Rupees Three Thousand (Rs. 3,000/-) being security for costs of appeal and hypothecated the said sum of Rupees Three Thousand (Rs. 3,000/-) by bond on the 13th day of
20 February, 1967.

3. The Petitioner - Appellant has also deposited with the said Registrar on the 13th day of February 1967 a sum of Rs. 300/- in respect of the amounts and fees mentioned in section 4(2) (b) and (c) of the Appeals (Privy Council) Ordinance

4. The Petitioner-Appellant has, at the same time at which he gave security for the prosecution of his appeal, lodged with the said Registrar stamps to the value of Rs. 24/- for the duty payable in respect of the Registrar's certificate in appeal as required by section 15 of the Appellate Procedure (Privy Council) Order, 1921.

30 5. The Petitioner-Appellant has given notice of this application to the Respondent abovenamed by sending to him on this day by registered post the following notice together with copies of this petition and the affidavit filed herewith:

"TAKE NOTICE that having complied with the conditions on which conditional leave to appeal to the Privy Council was granted to me in S. C. Application No.442/66 against the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 29th day of September 1966, I have made an application to the said
40 Supreme Court on this day for final leave to appeal.

Copies of the Petition and affidavit are hereto annexed for your information.

Sgd. D. J. Ranaweera
Petitioner-Appellant.

No. 8
Application for
Final Leave to
Appeal to the
Privy Council-
19.2.67
—Continued

Dated at Colombo this 19th day of February 1967.”

WHEREFORE THE PETITIONER-APPELLANT PRAYS THAT:

- (a) He be granted final leave to appeal to the Privy Council against the said Judgment and Decree of the Supreme Court of the Island of Ceylon dated the 29th day of September 1966,
- (b) for Costs, and
- (c) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. Wijemanne & Co.
Proctors for Petitioner-Appellant. 10

No. 9
Minute of Order
granting Final
Leave to Appeal
to the
Privy Council
3. 6. 67

No. 9
Minute of Order Granting Final Leave to Appeal to the
Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set in the Schedule to the Appeals (Privy Council) Ordinance.

S. C. Application No. 317/64. (Writ)	D. J. Ranaweera of 96, McCarthy Road, Colombo 7 <i>Petitioner-Appellant.</i> 20
<i>vs.</i>	
S. C. Application No. 442/66. (Conditional Leave)	C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, Department of Inland Revenue, Colombo..... <i>Respondent.</i>
S. C. Application No. 62/67 (Final Leave)	

The application of Donald Jason Ranaweera of No. 96, McCarthy Road, Colombo 7, for Final Leave to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 29th day of September, 1966 in S. C. Application No. 317/64, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Chief Justice and the Honourable Asoka Windra Hemantha Abeyesundere, Q. C., Puisne Justice in the presence of H. W. Jayawardene Esquire, Q. C., with S. Sithambalam Esquire, Advocates for the Petitioner-Appellant and P. Naguleswaran Esquire, Crown Counsel, for the the Respondent, order has been made by Their Lordships on the Third day of June, 1967 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council. 30

Sgd. N. NAVARATNAM
Registrar of the Supreme Court. 40

INDEX - PART II
EXHIBITS

R 1
Agreement reached under Section 69(2) of the
Income Tax Ordinance.

R1
 Agreement
 reached under
 Section 69(2)
 of the
 Income Tax
 Ordinance
 27.3.61

File No. 52/9241

In regard to the appeals lodged by me against the income tax assessments made on me for the years 1950/51, 1951/52, 1952/53, 1953/54, 1954/55, 1955/56, 1956/57 and 1957/58 and the Profits Tax assessments for the years 1950, 1951, 1952, 1953, 1954, 1955 and 1956, I hereby in terms of Section 69(2) of the Income Tax Ordinance
 10 agree that I am liable to be assessed at the following amounts.

INCOME TAX

1.	Year of assessment	1950/51 - Assessable income	Rs. 594,075/-
2.	"	" 1951/52 -	Rs. 633,568/-
3.	"	" 1952/53 -	Rs. 107,610/-
4.	"	" 1953/54 -	Rs. 33,972/-
5.	"	" 1954/55 -	Rs. 617,358/-
6.	"	" 1955/56 -	Rs. 1,136,924/-
7.	"	" 1956/57 -	Rs. 270,629/-
8.	"	" 1957/58 -	Rs. 447,763/-

20 PROFITS TAX

1.	1950	Chargeable Surplus	Rs. 469,887/-
2.	1951	Chargeable Surplus	Rs. 280,763/-
3.	1952	Chargeable Surplus	Rs. 116,555/-
4.	1953	Chargeable Surplus	Rs. 65,873/-
5.	1954	Chargeable Surplus	Rs. 571,347/-
6.	1955	Chargeable Surplus	Rs. 424,445/-
7.	1956	Chargeable Surplus	Rs. 137,293/-

The above amounts of assessable income and chargeable surplus have been computed at the end of an examination of the improvement
 30 in my wealth position between the period 1st April, 1949, and 31st March, 1957. As a result of this examination the discrepancy I could not explain between my disbursements and receipts was estimated at Rs. 4,400,000 and it has been agreed that of this Rs. 2,400,000 should be included in my assessments as undisclosed income. The assessable incomes mentioned in the preceding paragraph have been computed on this basis.

I have further agreed that out of the 4,400,000 rupees referred to above 2 million was income of my father, the late Mr. D. A. Ranaweera. As a part of the settlement of my appeals, I further
 40 agree that I will pay income tax and profits tax on 600,000 rupees

R1
Agreement
reached under
Section 69(2)
of the
Income Tax
Ordinance
27.3.61
—Continued

out of the 2 million treated as my father's income. I agree that this 600,000 rupees is assessable for the years of assessment 1950/51, 1951/52 and 1952/53 at the rate of 200,000 for each year. On this basis I agree to pay income tax on additional assessments to be made on me as executor of the estate of the late Mr. D. A. Ranaweera on the following basis.

1950/51	additional income	Rs. 200,000
1951/52	additional income	Rs. 200,000
1952/53	additional income	Rs. 200,000

I also agree to pay the following amounts as profits tax on the sum of Rs. 600,000/- assessed as my father's income on the following basis.

1950	Rs. 40,000/-
1951	Rs. 50,000/-
1952	Rs. 44,026/-

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.

Witness
K. S. Vaidyanathan
27. 3. 1961

Sgd. D. J. Ranaweera
27/3/61

True copy.
Asst. Commissioner.

This is the identical document)
marked "R1" and referred to in)
my affidavit dated the 13 day)
of November, 1964)

Sgd. L. Piyasena.

30

Before Me,
Sgd. H. Deheragoda
Justice of the Peace
for the Island of Ceylon.

B**(Petitioner's Document)****Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1955/56.**

When replying

please quote File No. 52/9241(SEC).

Department of Inland Revenue, Senate Square,
New Secretariat, P. O. Box 515, Colombo 1.

Form No. 2PB

YEAR OF ASSESSMENT 1955/56

B
(Petitioner's Document)
Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1955/56
3. 8. 62

10 In the above Assessment issued on 10. 5. 61 under Charge No. HH249 which has now become final and conclusive in terms of Section 79 your assessable income was assessed at Rs. 1,030,838.

As the income assessed exceeds the income specified in your return, I propose to impose a penalty on you under Section 80 (1) of the Income Tax Ordinance for making an incorrect return.

I am now requesting you to state in writing on or before 17.8.62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return and that, accordingly, no penalty should be imposed.

(Sgd.) C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue.
Date 3. 8. 62.

20

To:- D. J. Ranaweera Esq.,
96, Mc Carthy Road,
Colombo 7.

C**(Petitioner's Document)****Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1956/57**

When replying please quote

30 File No. 52/9241 (SEC.)

Department of Inland Revenue, Senate Square, New Secretariat, P. O. Box 515, Colombo 1.

Form No. 2PB

YEAR OF ASSESSMENT 1956/57

C
(Petitioner's Document)
Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1956/57
3. 8. 62.

In the above Assessment issued on 10. 5. 61 under Charge No. HH 1378 which has now become final and conclusive in terms of Section 79, your assessable income was assessed at Rs. 236,306.

C
(Petitioner's Document)
Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1956/57
3 8. 62.

—Continued

As the income assessed exceeds the income specified in your return, I propose to impose a penalty on you under Section 80(1) of the Income Tax Ordinance for making an incorrect return.

I am now requesting you to state in writing on or before 17.8.62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return, and that, accordingly, no penalty should be imposed.

Sgd. C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue.
Date 3. 8. 62.

10

To:

D. J. Ranaweera Esqr.,
No. 96, McCarthy Road,
Colombo 7

D
(Petitioner's Document)
Notice requesting to show cause why a penalty should not be imposed in respect of the year of Assessment 1957/58
3.8.62.

D
(Petitioner's Document)

Notice requesting to show cause why a penalty should not be imposed in respect of the year of Assessment 1957/58.

When replying please quote
File No. 52/9241.

Form No. 2PB
Department of Inland Revenue, Senate 20
Square, New Secretariat, P. O. Box 515,
Colombo 1.

YEAR OF ASSESSMENT 1957/58

In the above assessment issued on 10. 5. 61 under Charge No. HL. 1249 which has now become final and conclusive in terms of Section 79, your assessable income was assessed at Rs. 447,793.

As the income assessed exceeds the income specified in your return, I propose to impose a penalty on you under Section 80(1) of the Income Tax Ordinance for making an incorrect return.

I am now requesting you to state in writing on or before 17. 8. 62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return, and that, accordingly, no penalty should be imposed.

Sgd. C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue
Date 3. 8. 62.

To:-

D. J. Ranaweera Esqr.,
No. 96, McCarthy Road,
Colombo 7.

R 2

**Notice requesting to show cause why action should not be taken
under Section 92 (1) of the Income Tax Ordinance**

BY REGISTERED POST

52/9241/LP

August 3rd 62.

R2
Notice request-
to show cause
why action
should not be
taken under
Section 92(1)
of the Income
Tax Ordinance
3 8.62.

10 Sir,

It has been reported to me that the income tax returns made by you for the years of assessment 1950/51, 1951/52, 1952/53, 1953/54 and 1954/1955 have been found to be false. As a result of the investigations carried out into the returns furnished by you, you have agreed that the following sums should be treated as undisclosed income and added to the income shown in your returns for purposes of arriving at your assessable income:-

Year of Assessment	1950/51	Rs. 150,000
- do -	1951/52	250,000
- do -	1952/53	250,000
- do -	1953/54	350,000
- do -	1954/55	350,000

20 In the circumstances, it is necessary for me to consider what steps should be taken to impose on you the penalties prescribed under section 92 (1) of the Income Tax Ordinance.

Please show cause in writing on or before 17th August, 1962, why action under section 92 (1) of the Income Tax Ordinance should not be taken against you.

I am Sir,

Your obedient servant,
Intd. C. B. E. W.
Deputy Commissioner.

30 D. J. Ranaweera Esqr.
96, Mac Carthy Road,
Colombo 7.

True copy of office copy.
Sgd.
Asst. Commissioner.
10. 11. 64

This is the identical document)
marked "R2" and referred to in)
my affidavit dated the 13th day)
of November, 1964 . . .)

Sgd. C. B. E. Wickremasinghe

40

BEFORE ME,
Sgd. H. Deheragoda.
JUSTICE OF THE PEACE
for the Island of Ceylon

R3
 Agreement to
 pay penalties
 in respect of
 the Years of
 Assessment
 1950/51 to
 1957/58
 3.7.63.

R 3
**Agreement to pay penalties in respect of the Years of
 Assessment 1950/51 to 1957/58**

No. 52/9241.
 Colombo.

Having incurred penalties under the provisions of the Income Tax Ordinance, in consideration of proceedings not being taken against me in respect of the said penalties, I hereby agree to pay to the Commissioner of Inland Revenue, Colombo, in respect of the penalties incurred for the years 1950/51 to 1957/58 inclusive, the sum of Rs. 450,000/- (Rupees 10 Four hundred and fifty thousand) within 2 months of the issue of a notice to pay by the Commissioner of Inland Revenue.

Dated:

Signed: D. J. Ranaweera
 3/7/63

Witness: C. B. E. Wickramasinghe

True copy.

Sgd.
 Asst. Commissioner.
 10/11/64

This is the indential document)
 marked "R3" and referred to in)
 my affidavit dated the 13th day)
 of November, 1964 ...)

Sgd. C. B. E. Wickramasinghe

20

BEFORE ME,
 Sgd. H. Deheragoda
 JUSTICE OF THE PEACE
 for the Island of Ceylon

R4
 Notice to Pay
 Rs. 450,000/-
 being penalties
 5.7.63.

R 4
Notice to Pay Rs. 450,000/- being penalties

File No. 52/9241.

Form No. 10Z 30

CHARGE No. 6/PB/CP.135.

Date 5th July, 1963.

To: D. J. Ranaweera Esqr.,
 of : 96, Mc Carthy Road, Colombo-7.

With reference to the letter signed by you agreeing to pay the sum of Rs. 450,000/-, being penalties, I write to inform you that the above amount falls due for payment on or before 8.9.63.

Department of Inland Revenue,
 (P. O. Box 515), Senate Square,
 Colombo.

Sgd. T. Chelvaratnam
for Commissioner of Inland Revenue.

40

NOTE

This form **MUST** be returned with your remittance to:
The Commissioner of Inland Revenue, Administrative Branch (C),
(P. O. Box 515), Colombo.

Certified True Copy of Office Copy
Sgd.
Asst. Commissioner.
13.11.64

R4
Notice to Pay
Rs. 450,000/-
being penalties
5.7.63.

—Continued

This is the identical document)
marked "R4" and referred to in) Sgd. C. B. E. Wickramasinghe.
10 my affidavit dated the 13th day)
of November, 1964.)

Before Me,
Sgd. H. Deheragoda.
Justice of the Peace
for the Island of Ceylon.

R 5

Letter giving Final date for payment of
Rs. 450,000/- being penalties

REGISTERED POST

20

D. 52/9241 (KW)

13th December, 1963,

R5
Letter giving
final date for
payment of
Rs. 450,000/-
being penalties
13.12.63

Sir,

I refer to my letter dated 5th July, 1963, requiring you to pay the sum of Rs. 450,000/- on or before 8th September, 1963. This payment was to be made pursuant to an agreement signed by you on 3rd July, 1963, whereby you had agreed to pay this sum in consideration of proceedings not being taken against you in respect of penalties you had incurred under the provisions of the Income Tax Ordinance.

30 Notwithstanding this agreement and the aforesaid notice, you have not paid the amount agreed to be paid. I am now giving you a final date for payment by the 27th December, 1963. If you fail to pay the abovementioned sum of Rs. 450,000/- by that date, I shall assume that you do not propose to comply with the terms of the agreement dated 3.7.63.

I am, Sir,
Your obedient servant,
Sgd.
Commissioner of Inland Revenue.
Certified true copy of office copy.
Sgd.
Asst. Commissioner.
10.11.64

D. J. Ranaweera Esq.,
40 96, Mc Carthy Road,
Colombo 7.

F
(Petitioner's
Document)
Further Notice
requesting to
show cause
why a penalty
should not be
imposed
10.2.64.

F
(Petitioner's Document)

Further Notice requesting to show cause why a penalty should not be imposed
My No. 52/9241. February 10, 1964.
YEARS OF ASSESSMENT 1955/56, 1956/57 and 1957/58.

I refer to my notices to you dated 3rd August 1962, issued for the above years in respect of action which I proposed to take under Section 80(1) of the Income Tax Ordinance.

At the interview you had with me on the 3rd July, 1963, in response to these notices, you agreed to pay Rs. 450,000/- in consideration of my not taking further action against you in connection with these and the years of assessment 1950/51 to 1954/55. But you have so far failed to honour this promise despite the fact that 7 months have elapsed since the issue of notice dated 5.7.63. 10

I now propose therefore, to make an order that you should pay a penalty as contemplated by Section 80(1) of the Income Tax Ordinance in respect of each of the above years and I am hereby giving you an opportunity to show cause, if any, on or before the 3rd March, 1964, against such order being made.

I am, Sir,

You obedient Servant,

Deputy Commissioner of Inland Revenue. 20

D. J. Ranaweera Esqr.,
96 Mc Carthy Road,
Colombo 7.

R6

**Letter addressed to Commissioner of Inland Revenue
by D. Wijemanne & Company, Proctors & Notaries**

DHARMADASA WIJEMANNE & CO.,
Proctors & Notaries
Tele: 6126, 79957 30

R6
Letter address-
ed to Commis-
sioner of
Inland Revenue
by
D Wijemanne
& Company,
Proctors &
Notaries
3.3.64.

Dharmadasa Wijemanne, J. P.
J. B. Puvimanasinghe
Upali W. Jayasooriya
Miss L. M. Fernando
H. S. Fernando

No.110/1, Front Street,
Colombo 11, 3. 3. 1964
(Ceylon)

Ref. No. JBP
Your Ref: D52/9241

The Commissioner of Inland Revenue,
Department of Inland Revenue,
Colombo.

Dear Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 and 1957/58

Reference your letter of the 10th February 1964 on the above subject we write on instructions from Mr. D. J. Ranaweera to state that he has cause to show.

10 Mr. M. Tiruchelvam Q. C., who has been retained to place this matter before you has unfortunately taken ill and is in Hospital. We therefore request that a month's time may be granted to enable Counsel to meet you.

Yours faithfully

Sgd. D. Wijemanne & Co.

wmc.

Mr. S. Sittampalam, Advocate
Junior to M. Tiruchelvam Q. C.
sees me to ask for time.
Time allowed.
intd. S. S.
3/3/64.

20

Certified true copy.

Sgd.

Asst. Commissioner

10/11/64.

G

(Petitioner's Document)

**Order under Section 80(1) imposing Penalties in respect of the
Years of Assessment 1955/56, 1956/57 and 1957/58**

30

File No. D52/9241.

YEAR OF ASSESSMET 1955/56, 1956/57 and 1957/58.

ORDER UNDER SECTION 80(1) IMPOSING PENALTIES

On the 3rd August 1961, I noticed Mr. D. J. Ranaweera the assessee to show cause why action should not be taken against him to impose penalties prescribed under Section 80(1) in respect of the years of assessment 1955/56, 1956/57 and 1957/58 and under Section 92(1) in respect of the years of assessment 1950/51, 1951/52, 1952/53, 1953/54 and 1954/55.

R 6
Letter address-
ed to Commis-
sioner of
Inland Revenue
by
D. Wijemanne
& Company,
Proctors &
Notaries
3.3.64.

—Continued

G
(Petitioner's
Document)
Order under
Section 80(1)
imposing
penalties in
respect of the
Years of
Assessment
1955 56, 1956/57
and 1957/58
21.4.64.

G
(Petitioner's
Document)
Order under
Section 80(1)
imposing
penalties in
respect of the
Years of
Assessment
1955/56, 1956/57
and 1957/58
21.4.64.

—Continued

On the 30th March 1963, in response to these notices Messrs E. B. Wickremanayake, Q. C. and P. Navaratnarajah, Advocates appeared before me. At this Meeting, Counsel for the assessee discussed a compromise of both these matters and ultimately agreed to compound the offences coming under Section 80(1) and under Section 92(1) at Rs. 450,000/-. They agreed to bring Mr. Ranaweera before me and to get him to sign an Agreement agreeing to pay the sum of Rs. 450,000/- as a compounding penalty.

Subsequently, on the 3rd July 1963 the assessee called with his Counsel, Mr. Navaratnarajah and signed an Agreement agreeing to pay the sum of Rs. 450,000/- in respect of the years 1950/51 to 1957/58 within 2 months of the issue of a notice to pay, by the Commissioner of Inland Revenue. The notice to pay this sum was issued to the assessee on 5th July 1963. It required him to pay the amount on or before the 8th September 1963. The assessee failed to honour this Agreement to pay the said sum of Rs. 450,000/- on or before the 8th September 1963. It still remains unpaid. 10

In view of the failure of the assessee to honour his promise to compound the offences on the payment of Rs. 450,000/-, I decided to take action in respect of the years 1955/56, 1956/57 and 1957/58 under Section 80(1) and wrote to him on the 10th February 1964, informing him that I proposed to make an order that he should pay a penalty under Section 80(1) and further informed him that I was giving him an opportunity to show cause, if any, on or before 3rd March 1964, against such order being made. On the 3rd March 1964 Messrs. D. Wijemanne & Co., Proctors, on behalf of the assessee stated that assessee had cause to show. They requested that as Counsel who was to appear for the assessee had taken ill and was in hospital, a month's time be granted to enable him to meet me. This application was allowed. 20

The extension granted has now expired and no further representations have been made. I am, therefore, proceeding to impose penalties under Section 80(1) in respect of the years of assessment 1955/56, 1956/57 and 1957/58. As Section 80(1) does not apply to the years 1950/51 to 1954/55 this order is confined to the years of assessment 1955/56, 1956/57 and 1957/58. 30

Mr. D. J. Ranaweera is a Landed Proprietor. He owned considerable extents of property and had a very large income. He, however, failed to make returns of income for the above years of assessment. Thereupon, the Assessor issued assessments in terms of Section 68(3) of the Income Tax Ordinance estimating the assessee's income as follows:- 40

Year of assessment 1955/56	Rs. 1,250,000/-
Year of assessment 1956/57	500,000/-
Year of assessment 1957/58	500,000/-

The assessee appealed against these assessments and furnished returns showing his income or loss to be as follows:-

Year of assessment 1955/56	Income	Rs. 421,678/-
Year of assessment 1956/57	Loss	83,674/-
Year of assessment 1957/58	Income	13,819/-

G
(Petitioner's
Document)
Order under
Section 80(1)
imposing
penalties in
respect of the
Years of
Assessment
1955/56, 1956/57
and 1957/58
21.4.64.

—Continued

The Assessor, on examining the returns, found that the cost of production on estates owned by assessee was very excessive compared to the cost of production on similar estates. He also noticed a large discrepancy between the income returned and investments made. At the end of a detailed investigation, agreement was reached with the assessee, under Section 73(2) of the Income Tax Ordinance and the assessee agreed to his assessable income being assessed as follows:-

1955/56:	Assessable income	Rs. 1,136,924/-
	Tax	827,357/-
1956/57:	Assessable income	Rs. 270,629/-
	Tax	150,566/-
1957/58:	Assessable income	Rs. 447,793/-
	Tax	335,924/-

When on the 3rd August 1962, the assessee was called upon by me to state in writing the grounds on which he relied to prove that there was no fraud or wilful neglect involved in the disclosure of his income, he replied that his position was that the sum of Rs. 44 lakhs was money given to him by his father and that part of it was given by his father-in-law. He added that as he was not in a position to prove this by documentary evidence, he had to agree to a sum of Rs. 24 lakhs being regarded as his income for the years in question. He stated further, that there had been no fraud or wilful neglect or intent to evade income tax involved in the disclosure of his income.

I am not satisfied with this explanation. As stated earlier, I wrote to the assessee on the 10th February 1964, informing him that I propose to make an order that he should pay a penalty under Section 80(1) and notified him that I was giving him an opportunity to show cause, if any, on or before 3rd March 1964, against such order being made. The assessee has not availed himself of this opportunity to show cause even by the extended date, 3rd April 1964, granted on the application of Messrs. Wijemanne & Co.

G
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1955/56, 1956/57
and 1957/58
21.4.64.

If the assessee's returns for the three years had been accepted, the tax charged would have been as follows:-

1955/56	Rs. 309,571/-
1956/57	Nil
1957/58	475/-

The tax charged for these three years and accepted by the assessee is as follows:-

1955/56	Rs. 827,357/-
1956/57	Rs. 150,566/-
1957/58	Rs. 335,924/-

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Thus the additional tax charged for the three years is Rs. 517,786/-, Rs. 150,566/- and Rs. 335,449/-.

As the assessee has not satisfied me that there was no fraud or wilful neglect involved in the disclosure of income in his returns for the years of assessment 1955/56, 1956/57 and 1957/58, I order him, under Section 80(1) of the Income Tax Ordinance to pay the following sums as penalties for making incorrect returns:-

For 1955/56	Rs. 180,000/-
For 1956/57	Rs. 50,000/-
For 1957/58	Rs. 120,000/-

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Sgd. C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue.

April 21st 1964.

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