SUREN DE SILVA

v.

THE COMMISSIONER-GENERAL OF INLAND REVENUE

SUPREME COURT
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 35/95.
C.A APPLICATION NO. 448/94 (REV).
D.C. COLOMBO NO. 56060/TAX.
JUNE 20, 1995.

Income Tax – Income from lands owned by Assessee's wife – Assessee's liability to pay tax – Effect of settlement in appeals against the Assessment – Section 117 of the Inland Revenue Act.

On a certificate filed by the Commissioner-General of Inland Revenue against the assessee the District Court ordered that a sum of Rs. 868,730/- being income tax be recovered from the assessee as a fine. The assessee applied to have the said order revised on the ground that the Agricultural lands which produced the income which was assessed belonged to his wife. Hence it was his wife who was legally liable to pay tax, even though she had permitted him to enjoy the income.

Held:

The submission of the assessee has no relevance to the case as the claim of the Commissioner of Inland Revenue was based on a settlement of the appeals preferred by the petitioner in terms of section 117 of the Inland Revenue Act. In any event, it was not a fit matter for the exercise of revisionary jurisdiction.

Cases referred to:

1. *Pondicherry Railway Co., Ltd. v. C.I.T.* (1931 AIR P.C. 165).
2. *Sassoon and Co. Ltd. v. C.I.T.* (26 I.T.R. 27).

APPEAL from judgment of the Court of Appeal.

Faisz Musthapha, P.C. with *R. G. L. de Silva,* for petitioner-appellant.

K. Sripavan, S.S.C. for respondent.

Cur. adv. vult.

August 23, 1995.
G. P. S. DE SILVA, C.J.

The respondent (the Commissioner General of Inland Revenue) filed in the District Court of Colombo a certificate in terms of section 130 (1) of the Inland Revenue Act No. 28 of 1979 for the recovery of a sum of Rs. 868,730/- as income tax, wealth tax and penalty due from the petitioner. The relevant years of assessment were 1982/83, 1983/84, 1984/85. The assessments were made partly in respect of agricultural income. The petitioner disputed only the component of tax in respect of the agricultural income which amounted to Rs. 80,392/-. He did not dispute his liability to pay the balance sum of Rs. 588,338/- due in terms of the aforesaid certificate.

At the inquiry before the District Court the petitioner objected to the recovery proceedings under section 130 of the Inland Revenue Act, No. 28 of 1979 on the ground that he was not "duly assessed". The submission was that he was assessed in respect of agricultural income from an estate called "Drunkin Estate" which was not owned by him. The owners were his wife and his mother. In short, the contention advanced on behalf of the petitioner was that he was assessed in respect of agricultural income which he did not earn and which did not accrue to him.

The District Court, however, overruled the objection and imposed the said sum of Rs. 868,730/- as a fine on the petitioner. The

petitioner moved the Court of Appeal by way of **revision** to set aside the order of the District Court. The application in revision was dismissed and hence the present appeal to this court.

It is not disputed that the petitioner is not the owner of "Drunkin Estate" which was the source of the agricultural income. The petitioner's wife by her letters R1 and R2 addressed to the respondent categorically stated that it was the petitioner who enjoyed the income from the estate for the relevant period.

The principal submission of Mr. Musthapha for the petitioner was that under our tax law the income must be earned by a person or the income must arise or accrue to him in order to attract tax in his hands. The mere receipt of income by a person will not attract tax. The fact that the petitioner's wife permitted the petitioner to enjoy the income did not in law make any difference as to the tax liability of his wife who was the owner of half share of the estate. The income still remained the income of his wife and it was she who was liable to tax on the income. It was only if she had "alienated" or "assigned" the **source** of her income so that it was no longer her income that she would not be liable to tax. In the instant case there was no such "alienation" or "assignment" of the source of the income. In support of these submissions Mr. Musthapha cited the case of *Pondicherry Railway Co. Ltd., v. C.I.T.*[1] and the case of *Sassoon and Co. Ltd. v. C.I.T.*[2].

It seems to me that the submissions of Mr. Musthapha though not without attraction, have little or no relevance, having regard to the **proved facts and circumstances of the instant case.** The affidavit of the respondent filed of record makes it clear (a) that the increase in the net wealth of the petitioner indicated that he had been in receipt of an income in excess of what he had declared in his returns; (b) that the assessment for the year 1982/1983 was computed on the basis of the net wealth and assessable income **agreed** upon by the petitioner and his auditor with the assessor; (c) that the assessments for the years 1983/1984 and 1984/1985 were made in settlement of the appeals preferred by the petitioner in terms of section 117 of the Inland Revenue Act, No. 28 of 1979. The appeals were settled on the

basis of the agreements entered into by petitioner and his auditor with the assessor. The notes of interview at which the agreements were reached were signed by the petitioner. These notes were produced marked R3 along with the affidavit of the respondent.

It is not suggested that the agreements entered into by the petitioner were vitiated by mistake, duress or by any other circumstance. The agreements were *ex facie* authorized by the statute. In this view of the matter, I hold that the contention of Mr. Musthapha that the agreements with the assessor were entered into without jurisdiction, is untenable. In any event, this is not a fit matter for the exercise of the revisionary jurisdiction of the Court of Appeal.

For these reasons, the appeal fails and is dismissed but without costs.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal dismissed.