PONNIAH
v.
COMMISSIONER-GENERAL OF INLAND REVENUE AND OTHERS

COURT OF APPEAL
JAYASINGHE, J. (P/CA) AND
EDIRISURIYA, J.
CA NO. 1249/99
MC MINUWANGODA NO. P/18060
JANUARY 22, AND
FEBRUARY 19, 2002

Inland Revenue Act, No. 28 of 1978, sections 115 (3) and 123 – Assessment cancelled as reasons were not given for rejecting return of income – Reasons given later – Fresh assessment served – Validity.

The respondent cancelled the assessment on appeal as the Inland Revenue Department had not given reasons for rejecting the petitioner's return of assessment. Thereafter, upon stating a number of reasons for rejecting the appeal, a fresh assessment was issued. It was contended that the appeal against the first assessment was determined when the respondent cancelled the assessment, as the assessment was *ultra vires* and invalid, and on the determination of the appeal the said assessment became final and conclusive as income assessed; and the respondent is debarred from reopening any matter determined on appeal.

Held :

(1) Issuance of an assessment without stating reasons is a curable defect in view of the fact that the Act does not preclude the assessor from making a fresh assessment.

Per Edirisuriya, J.

> "I am of the view that this court in exercising its discretionary power of issuing a writ of *certiorari* should not in any way prevent the revenue coming into state coffers purely on the ground that a public officer has failed to comply with a requirement of law."

APPLICATION for a writ of *certiorari.*

Shibly Aziz, PC, with *R. G. L. de Silva* for petitioner.

Farzana Jameel, Senior State Counsel for respondent.

Cur. adv. vult.

January 14, 2003

EDIRISURIYA, J.

In his petition the petitioner states after he retired from service on 01
14. 03. 1998 he received a gift of a motor car valued at Rs. 200,000 and an *ex gratia* payment of Rs. 500,000 from Mr. V. T. V. Devanayagampillai, the Chairman of V. T. V. Holding & Limited (his employer) in recognition of his exceptional services.

According to the petitioner by Notice of Assessment dated 25. 03. 1999 and bearing charge number 10/11/98/0688 (P1) the said amounts totalling Rs. 700,000 were assessed for puffiness to income tax as compensation for the year of assessment 1997/1998 by the 4th respondent Assessor Metro 'H' Branch of the Department of Inland 10
Revenue. The petitioner aggrieved by this assessment appealed against same by his petition of appeal dated 17. 04. 1999 on the ground that the said amount of Rs. 700,000 was received by him as a gift from his employer and thus not liable to tax. The petitioner states that consequent to the said appeal the 3rd respondent, the Deputy Commissioner of Inland Revenue Metro 'H' Branch, Department of Inland Revenue upon consideration of the grounds of appeal and attendant circumstances informed the petitioner by letter dated 26. 07. 1999 that she has directed the 4th respondent to cancel the assessment appealed against as the 4th respondent had failed to give 20
reasons for rejecting the petitioner's return of income for the year of assessment 1997/1998 as required by section 115 (3) of the Inland Revenue Act, No. 28 of 1978 as amended.

The petitioner further states that accordingly the 4th respondent issued form No. 10/W dated 16. 09. 1999 cancelling the said assessment and thereafter the 4th respondent issued a letter dated 16. 09. 1999 (P. 6) informing the petitioner that he had rejected the petitioner's return of income for the year of assessment 1997/ 1998 for the reasons stated therein.

According to the petitioner the 4th respondent upon stating a number of reasons proceeded to issue a fresh assessment dated 17. 09. 1999 (P6) under the charge No. 10/H/99/0184 in respect of the said sum of Rs. 700,000 as income from any other source. The total tax payable under this assessment inclusive of penalty being Rs. 274,858.

The petitioner also states that he being aggrieved by the said assessment appealed against it by a petition of appeal dated 15. 10. 1999.

The petitioner states that the appeal against the assessment dated 25. 03. 1999 issued under charge number 10/H98/0699 was for all purposes of the Inland Revenue Act, No. 28 of 1978, as amended determined when the 4th respondent cancelled the said assessment on the direction of the 3rd respondent as the assessment was *ultra vires* and invalid; on determination of the said appeal the said assessment became final and conclusive under section 123 as regards income assessed and other matters involving assessment; the 4th respondent is therefore debarred from reopening any matter determined on appeal; the provision in section 115 (3) would have the effect of fixing the 4th respondent to a definite position and not give him latitude to change the reasons already given or to communicate further reasons for the non-acceptance of a return of income furnished by an assessee after the assessment made by him has become final and conclusive.

The petitioner prays for a writ in the nature of a writ of *certiorari* quashing the assessment dated 17. 09. 1999 under charge number 10/H/99/0184. The question which arises for determination in this court

is whether the assessor is vested with jurisdiction to make a fresh assessment in place of an assessment annulled on appeal by the Commissioner on the ground that the assessment was *ultra vires* in terms of section 115 (3) of the Inland Revenue Act, No. 28 of 1978. The learned counsel for the petitioner submitted that the Inland Revenue Act contains no express provisions to empower a further assessment when an assessment becomes null and void by reason of the assessor's failure to comply with the requirements mandated by the provisions of the Inland Revenue Act.

He submitted that in the absence of such provisions it is relevant to resort to legislative history to ascertain the legislative intent in this regard. The learned counsel for the petitioner referred to the Inland Revenue (Amendment) Bill presented in Parliament in September, 1994 wherein an amendment to section 115 (3) was included in order to empower an assessor to make a fresh assessment in place of an assessment rendered null and void for the reason that the provisions of proviso to section 115 (3) have not been complied with. It is his submission that the legislature in its wisdom did not confer such powers on an assessor and consequently did not enact the said provisions of the Bill into law. Therefore, he submitted the aforesaid abortive attempt to amend section 115 (3) confirms the statutory position that an assessor does not have the power to make a further assessment *in lieu* of an assessment in terms of the proviso to section 115 (3).

The learned State Counsel on behalf of the respondent contends that for writ of *certiorari* to lie there should have been an act done in excess of the statutory powers. In the instant case the 4th respondent merely cancelled an assessment that had been issued without complying with the mandatory requirement and issued an assessment together with the reasons for rejection of the return. She states what the petitioner is trying to do is to prevent the Inland Revenue Department from informing him of the reasons for rejecting his return. It is her submission that the law has developed to the extent of making it mandatory to give reasons for decisions.

She further contends that if a statutory authority in the exercise of its statutory functions fails to comply with a mandatory requirement the statutory authority is not deprived of the power to execute that duty in compliance with the statute. The learned Senior State Counsel submits that finality does not attach to P1 the original assessment since it is invalidated.

Therefore, the Inland Revenue Department is not precluded from issuing a proper assessment in terms of the law.

Referring to the submission made by the learned counsel for the petitioner that the proposed amendment to section 115 (3) was not enacted since the assessor does not have the power to make a further assessment *in lieu* of an assessment annulled in terms of the proviso to section 115 (3) the learned Senior State Counsel contends that the fact that the legislature did not enact the amendment is a clear indication that the assessor has a right to issue a fresh assessment.

Having regard to the submissions made on behalf of both parties and all circumstances of the case I am of the view that the issuance of an assessment without stating reasons is a curable defect in view of the fact that the Inland Revenue Act does not preclude the Assessor from issuing a fresh assessment.

I am also of the view that this court in exercising its discretionary power of issuing a writ of *certiorari* should not in anyway prevent the revenue coming into state coffers purely on the ground that a public officer has failed to comply with a requirement of law.

Accordingly, I dismiss the application without costs.

JAYASINGHE, J. (P/CA) – I agree.

Application dismissed.