

1962

*Present : Gunasekara, J.*

R. G. W. NILAWEERA, Appellant, and COMMISSIONER  
OF INLAND REVENUE, Respondent

*S. C. 188—Application in Revision in M. C. Badulla, 25321*

*Income tax—Proceedings for recovery of tax before Magistrate—Certificate of Commissioner—Evidential value thereof—Right of alleged defaulter to show that he was not duly assessed—Income Tax Ordinance (Cap. 188 of Legislative Enactments, 1938 ed.), ss. 65, 80.*

In proceedings taken under section 80 of the Income Tax Ordinance for the recovery of income tax it is open to the Magistrate to consider whether the assessment was time-barred. The provisions of subsections (1) and (2) of section 80 do not have the effect of preventing an alleged defaulter from satisfying the Magistrate that he was not duly assessed.

**A**PPPLICATION to revise an order of the Magistrate's Court, Badulla.

*G. E. Chitty, Q.C., with E. A. G. de Silva, for Petitioner.*

*M. Kanagasunderam, Crown Counsel, for Respondent.*

*Cur. adv. vult.*

January 8, 1962. GUNASEKARA, J.—

This is an application for the revision of an order made by the Magistrate of Badulla under the Income Tax Ordinance, directing that a sum of Rs. 1015, alleged to be tax in default, be recovered as a fine imposed on the petitioner and sentencing him to simple imprisonment for 3 months in default of payment of this sum as a fine.

The order was made in proceedings that were taken upon a certificate dated the 11th April 1960, which was issued by an assistant commissioner of inland revenue in terms of section 80 (1) of the Income Tax Ordinance, Cap. 188 of the 1938 edition of the Legislative Enactments.<sup>1</sup> (In order to avoid confusion I shall refer to the Ordinance as it appears in this edition of the Enactments.) The certificate stated that the petitioner had made default in the payment of Rs. 1015, being income tax due from him, and gave particulars of this amount. It consisted of the amount of an additional assessment of the tax for the year 1952-53 and a penalty for non-payment. The petitioner maintained that the assessment was time-barred, inasmuch as it was not made within the time prescribed by section 65, and was therefore invalid, and that consequently there was no tax in default. The learned magistrate held that it was not open to him to investigate this defence and that in any event the assessment was not time-barred. He said :

I do not think that it is open to me to initiate an inquiry as to whether the claim in question is time-barred or not as this will involve me in a reconsideration of matter which should have been considered by the Commissioner of Inland Revenue. The assessment in the instant case appears to me in any event to have been made within 3 years and it is not time-barred. I therefore hold that the defaulter has not showed sufficient cause why further proceedings for the recovery of tax should not be taken against him.

The learned magistrate's view that it was not open to him to consider whether the assessment was time-barred is based on the proviso to section 80 (1), where it is enacted that nothing in that section shall authorize or require the magistrate in any proceeding thereunder to consider, examine or decide the correctness of any statement in the certificate. The matters that are required to be stated in the certificate are the particulars of the tax in default that is sought to be recovered and the name and last known place of business or residence of the defaulter. These statements would assume that the alleged defaulter has been duly assessed to income tax, but there is nothing in the proviso to prevent him from proving that the assumption is incorrect. The real purpose of the proviso, as was pointed out by Gratiaen, J. in *de Silva v. The Commissioner of Income Tax*<sup>2</sup>, is to prevent a defaulter who has been duly assessed to income tax for which he is properly

<sup>1</sup> Section 85 (1) of Cap. 242 of the 1956 edition.

<sup>2</sup> (1951) 53 N. L. R. 280 at 282.

chargeable from re-agitating, in the course of proceedings taken under section 80 (1) for the recovery of such tax, the correctness of the assessments served on him. Subsection (2) of the section provides that in any proceeding under subsection (1) the Commissioner's certificate shall be sufficient evidence that the tax has been duly assessed and is in default. It must be noted that the certificate is to be merely sufficient, and not conclusive, evidence of these facts. Moreover, the provision that it shall be evidence connotes that an issue as to whether the tax has been duly assessed can arise for decision in such a proceeding. With respect, I agree with the view taken in *de Silva's case (supra)* that the provisions of these subsections do not have the effect of preventing an alleged defaulter from satisfying the magistrate that he was not duly assessed.

The learned magistrate's finding that in any event the assessment was not time-barred is not based on any evidence but on a statement made by the Commissioner's counsel that the assessment in question was made on the 26th March 1955.

In my opinion the petitioner is entitled to be given an opportunity of satisfying the magistrate that he was not duly assessed. I set aside the order made by the magistrate and direct that the case be remitted to the Magistrate's Court so that the petitioner may be given such an opportunity.

*Order set aside.*

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