

1938

*Present : Poyser S.P.J. and Wijeyewardene A.J.*IBRAHIM SAIBO *v.* COMMISSIONER OF STAMPS.64—*D. C. Kandy, 5,176.*

Estate duty—Final assessment not questioned by way of appeal—Assessee not entitled to attack assessment in citation for execution—Estate Duty Ordinance, No. 8 of 1919, ss. 22 (3) and 32.

Where a person has failed to appeal from an assessment for estate duty under section 22 (3) of the Estate Duty Ordinance, he is not entitled to question the correctness of the assessment in proceedings for execution under section 32 of the Ordinance.

A PPEAL from an order of the District Judge of Kandy.

H. V. Perera, K.C. (with him *Peri Sunderam*), for appellant.

S. J. C. Schokman, C.C., for respondent.

Cur. adv. vult.

October 14, 1938. WIJEYEWARDENE A.J.—

This is an appeal by an administrator from an order made against him under section 32 of The Estate Duty Ordinance, No. 8 of 1919, in respect of the estate of one Y. M. Ibrahim Saibu, who was a partner of the firm of K. Abram Saibu & Co. In July, 1933, the appellant who had applied for letters of administration delivered a statement of assets and liabilities of the estate to the Commissioner of Stamps under section 21. Among the assets he included—

	Rs.	c.
(i) Amount at credit at Messrs. K. Abram Saibu & Co., to October 31, 1929 ..	105,250	50
(ii) Amount at interest at Messrs. K. Abram Saibu to March 31, 1931 ..	8,094	15
	113,344	65

The Commissioner of Stamps made what he called a "provisional assessment of duty" in August, 1933, accepting the statement of assets as correct and disallowing the liabilities for the purposes of the provisional assessment. To this assessment was appended the following note:—
"This assessment is provisional and is liable to revision after verification of the assets and liabilities of the estate. It is granted to make the executor (*sic*) to obtain letters of administration expeditiously". The estate duty was finally fixed at Rs. 3,426.35 and the administrator paid the amount and applied for letters of administration.

After obtaining the letters of administration, the appellant filed action No. 46,937 in the District Court of Kandy against K. Abram Saibu & Company for the recovery of Rs. 113,344.65 due to the estate. It is alleged that the administrator fixed the amount due as Rs. 113,344.65 without an examination of the books of account of the firm which were not made available to him by the partners of the firm. It is further stated that at the trial the lawyers examined the books and found that the sum due in fact was only Rs. 25,473.52 and a consent decree was entered on July 27, 1936, for Rs. 26,000 in favour of the estate. By his letter A 3 of September 14, 1936, the administrator intimated to the Commissioner of Stamps the result of the case and desired him to reduce to Rs. 26,000 the two assets valued in his declaration at Rs. 113,344.65. In the meantime the Commissioner of Stamps served on the appellant in August 18, 1936, what was called an "Additional Assessment of Duty" showing that he has increased the nett value of the estate adopted for the provisional assessment by Rs. 77,293 and claiming an additional amount of Rs. 5,221.23 as additional estate duty. On September 28, 1936, the Commissioner of Stamps replying to A 3 refusing to accept the decree of consent entered in D. C. Kandy, 46,937, as sufficient evidence of the correct value of the two assets in question and intimating that the assessment of August 18, 1936, has now become final.

On the appellant making default in the payment of the additional estate duty of Rs. 5,221.23 the Commissioner of Stamps obtained a citation against him, and the District Judge after inquiry directed writ to issue against the appellant for that amount. The present appeal is from that order of the District Judge.

The learned Counsel for the appellant contends that no assessment has been made as required by section 22 of the Ordinance and that as there was no occasion for him to appeal under section 22 (3) against an assessment he is at liberty to show cause against the issue of writ by pointing out that the assets have been overvalued in the "provisional" and additional assessments.

The "provisional" assessment was an assessment made for a limited purpose as indicated by the Commissioner in his endorsement on the valuation while the "additional" assessment is undoubtedly the final assessment which the Commissioner had to make under section 22 after causing "a statement and estimate to be made by any assessor or assessors to be appointed by the Commissioner". In his affidavit of objections filed in November, 1937, after notice was served on him to show cause against the issue of writ, the appellant himself referred to the

“additional” assessment as the final assessment and the proceedings in the District Court show that the inquiry was held on the footing that the assessment was the final assessment under section 22. The “additional” assessment therefore is binding on the appellant as he failed to appeal against such assessment under section 22 (3).

I do not think that a person cited under section 32 is entitled to reopen the question of the correctness of the assessment in an inquiry held under that section. (*Vide* 76, D. C. Jaffna, 220—S. C. Minutes of July 22, 1924.)

I dismiss the appeal with costs.

POYSER S.P.J.—I agree.

Appeal dismissed.

