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1945 *Present :* **Soertsz A.C.J.**

PIYASENA (Assistant Assessor, Department of Income Tax), Appellant, *and* **VAZ**, Respondent.

589—M. C. Colombo, 34,380.

Income Tax—Making and signing false statements in return—Person who furnishes return cannot deny knowledge of contents of return—Onus on prosecution to establish accused's intention to evade tax—Income Tax Ordinance (Cap. 188), ss. 87, 54 (5).

Criminal Procedure—Addition of a charge and alteration of a charge—Difference between—Criminal Procedure Code, ss. 172, 193.

Where, in a prosecution under section 87 (1) (*b*) and section 87 (1) (*d*) of the Income Tax Ordinance, it was not disputed that the return, statement or form in question was furnished by the accused or by his authority—

Held, that it was not open to the accused to say that although he signed the return he was not cognizant of its contents or of the matters contained in the statements or forms attached to the return. The onus was, however, on the prosecutor to establish beyond reasonable doubt that the accused intended to evade tax.

Held, further, that in view of sections 172 and 193 of the Criminal Procedure Code it is open to a Magistrate to add a charge without producing the result that thereby the charge is altered. It is only the substitution of one charge for another that amounts to an alteration of a charge in the Magistrate's Court.

APPEAL against an order of acquittal from the Magistrate's Court, Colombo. Originally there were two charges against the accused, one under section 87 (1) (*b*) of the Income Tax Ordinance alleging that he had made a false statement to the effect that sales for the year ending December, 1942, amounted to Rs. 50,248·03 whereas, in fact, they amounted to more, and the other, under section 87 (1) (*d*) alleging that he made his Income Tax return without reasonable ground for believing that it was a true return. On a later date, viz., August 18, 1944, another charge was added under section 87 (1) (*b*) alleging that the accused wilfully made a false statement that his income from his business for the relevant period was Rs. 7,502·17 whereas, in fact, it was more.

H. H. Basnayake, Acting Solicitor-General (with him *H. A. Wijemanne, C.C.*), for the complainant, appellant.—The accused-respondent was charged under sections 87 (1) (*b*) and 87 (1) (*d*) of the Income Tax Ordinance

1—J. N. A 54275–556 (9/45)

(Cap. 188). The person who signs the return is deemed to know the contents of the return. Section 87 (1) contains the words " Wilfully with intent to evade . . . . ". Knowledge is not mentioned in the section. Even if knowledge is necessary the documents prove knowledge of the facts. The documents make it clear that the accused was an active participant in the preparation of the accounts. The accused, therefore, knew that the return contained facts which were false to his knowledge. The evidence shows that in fact the return was not the work of accused's clerk, Rajan. The accused's version that he was an innocent person merely signing the return must be rejected. Therefore, even if knowledge is necessary the facts prove existence of knowledge and the accused is guilty. Further, under section 54 (5) of the Ordinance knowledge is imputed to the person signing the return. He is deemed to be cognizant of all matters in the return. The words used in the section are " wilfully with intent to evade . . . . " not " knowingly ". The word " wilfully " is used as opposed to " accidentally ". With regard to the meaning of the term " wilfully " see *Times of Ceylon v. Marcus* [1]. The English doctrine of *mens rea* is not a part of the law of Ceylon—*Weerakoon v. Ranhamy* [2]. The word " wilfully " in a statute connotes " intention "—*Wheeler v. New Merton Mills Ltd* [3]. Section 54 (5) would be nullified if the Income Tax authority has to prove knowledge in every case. The Ordinance must be looked at as a whole.

H. V. Perera, K.C. (with him *S. Nadesan*), for the accused, respondent.—Where a criminal prosecution is launched against a taxpayer the ordinary principles of criminal jurisprudence apply. A hypothesis negativing guilt explains all the facts. No inference can be drawn that the clerk's negligence is attributable to the accused. This is not a case of leaving out transactions or omitting profits in the accounts ; it is a case where work in connexion with the compilation of the accounts was not completely done. There is a distinction between " intention " referable to an act itself and " intention " used with reference to the purpose of the act. The words in section 87 are " wilfully with intent to evade . . . . ". The " intention " here is used with reference to the purpose—the accused must have knowledge. The prosecution cannot prove the true figure of assessment because there are no data to go upon. " Wilfully " indicates " deliberation ". In *Times of Ceylon v. Marcus* (*supra*), where the words were " wilfully publishing . . . . " the intention relates to a certain act. In the present case there must be an intention to evade payment of tax. One cannot form an intention to evade payment of tax without knowledge.

[SOERTSZ A.C.J. :—How is section 87 affected by section 54 (5) ?]

" Statements " make no part of the " return ". A person is deemed to be cognizant of matters contained in what he signs. The words " for all purposes " in section 54 cannot be imputed to the second part of that section. For the accused to be guilty he must have a real intention and a real knowledge, not an imputed intention and an imputed

[1] *(1913) 16 N. L. R. 225.* [2] *(1921) 23 N. L. R. 33.*
[3] *(1933) 2 K. B. D. 669 at p. 677.*

knowledge. The accused is not " deemed to know " facts outside the facts contained in the return. Intention to evade is a real thing which must be proved, a real intention as opposed to a constructive one.

It is further submitted that the third charge was added without the sanction contemplated in section 89 of the Income Tax Ordinance. Every charge must have a sanction unless covered by section 175 of the Criminal Procedure Code. Here the added charge is not covered by section 175.

H. H. Basnayake, in reply.—The added charge is covered by sections 172 and 193 of the Criminal Procedure Code. On the question of " deeming " knowledge see *Shepherd v. Broome*[1]. As to the question how far it is open to the Appeal Court to review the decision of a trial judge involving the demeanour of witnesses see *Yuill v. Yuill*[2].

Cur. adv. vult.

November 15, 1945. SOERTSZ A.C.J.—

This is an appeal by an Assessor of the Department of Income Tax, with the sanction of the Attorney-General, against an order of an Additional Magistrate of the Magistrate's Court of Colombo, acquitting the accused-respondent of three charges preferred against him under the Income Tax Ordinance (Cap. 188). Two of the charges were laid under section 87 (1) (*b*) of that Ordinance, and the other under section 87 (1) (*d*). It would appear that, originally, there were only two charges against the accused one under 87 (1) (*b*) alleging that he had made a false statement to the effect that sales for the year ending December, 1942, amounted to Rs. 50,248·03 whereas, in fact, they amounted to more, and the other that he made his Income Tax return without reasonable ground for believing that it was a true return. But, on August 18, 1944, another charge was added under 87 (1) (*b*), alleging that the accused wilfully made a false statement, namely, that his income from his business for the relevant period was Rs. 7,502·17 whereas, in fact, it was more.

Section 89 of the Ordinance says that " no prosecution in respect of an offence under section 85 or section 87 may be commenced except at the instance of or with the sanction of the Commissioner ". Counsel for the accused-respondent contended that the addition of a charge made on August 18, 1944, was obnoxious to section 172 of the Criminal Procedure Code ; or if it was not, then that it lacked the sanction required under section 89 of the Income Tax Ordinance read with section 175 of the Criminal Procedure Code. It seems to me that in view of sections 172 and 193 of the Criminal Procedure Code it is open to a Magistrate to add a charge without producing the result that thereby the charge is altered. It is only the substitution of one charge for another that amounts to an alteration of a charge in the Magistrate's Court. Besides, even if the addition of the charge is regarded as an alteration it is sufficiently clear that that was done at the instance of the Commissioner of Income Tax. I am, therefore, of opinion that all three charges, were rightly tried and that the appeal of the appellant must be considered with reference to all three charges.

[1] *(1904) A. C. 342 at p. 345.* [2] *(1945) 1 A. E. R. 183 at p. 188.*

The corner-stone of those charges is the allegation that in doing the acts imputed to him, the accused-respondent intended to evade tax. The onus is on the prosecutor to establish that intention beyond reasonable doubt. Now, intention in a case of this kind, as indeed in most cases, is a matter for deduction from all the relevant evidence and matters that a tribunal accepts as satisfactory. Section 54 of the Income Tax Ordinance provides in sub-section (5) that " a return, statement or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognizant of all matters therein". In this case, it was not disputed that the return, statement or form in question was furnished by the accused-respondent or by his authority, and, in consequence, it is not open to the accused-respondent to say that although he signed the return, statement form he was not cognizant of its contents. He must be deemed to have been cognizant of everything that appeared in the return, in the statement of particulars, and in the form regarded as one thing. I cannot accede to the argument that a taxpayer's culpability under section 87 has to be determined only with reference to the matters contained in what purports to be the *return* and that false or inaccurate statements in a form are irrelevant for that purpose. It seems to me, therefore, that assuming that the accused was cognizant of everything stated in his return with the statement of particulars and with the statements in the form in which the return has substantially to be made, the prosecution must show from all the other relevant facts and matters that the only reasonable intention that a prudent man ought to draw is that the accused intended to evade the tax. After a very careful examination of all the evidence and matters in this case, I am unable to endorse the view taken by the Magistrate. In my opinion, an intention to evade tax has been amply established. Having regard to the common course of human conduct and the course of business, I cannot bring myself to believe that the accused who since 1935 has carried on a successful business in a very competitive line is the innocent abroad that his Counsel sought to depict him to be, a man of simple faith and a kind heart, almost completely dependent on a lazy and unscrupulous peripatetic clerk, on a manager conspicuous by his absence as a witness for the accused, and, in the event of his getting into trouble, on an astute Income Tax Expert who knew the season when to take occasion by the hand and make the necessary delay for the purpose of preparing a new Cash Book. If the accused had been as helpless as all that his business would long since have been in other hands. But, in point of fact, admittedly, the accused's brother-in-law appears to have had such a high opinion of the accused's business acumen that he sent his money to the accused for investment. I mention that just as a clue to the real capacity of the accused. I am not at all impressed by the reasoning by which the Magistrate reached the conclusion that he doubted not " that it was the clerk, Rajan, who dealt with the accused's Income Tax from *year to year* and that the Income Tax Returns were prepared by Rajan ". The

principal reasons given by the Magistrate for the finding are (*a*) that he gave his evidence in Tamil, (*b*) that he could not express himself properly in English and that his knowledge of the English language is very limited, (*c*) that he struck the Magistrate as of a very average intelligence. These are very poor reasons indeed and, if I may say so, have more the sound of apologies or excuses for taking a certain view. I would invite attention to the case of *Yuill v. Yuill*[1] and to what Lord Greene M.R. had to say about Judges and the demeanour of witnesses. Indeed, I am quite satisfied that Rajan far from being the villain of the piece is a very shadowy personage almost bordering on the mythical. This clerk who, according to the Magistrate, prepared the accused's Income Tax return " year after year " figures on the accused's pay-roll only twice and that only to draw paltry sums as his yearly salary, Rs. 95 in one year and Rs. 125 in another year. It is not surprising that he was as lazy and dilatory as the accused complains he was, although the accused does so in order to make him bear this load of bad book-keeping. Rajan has now disappeared conveniently or inconveniently for the accused and has left not a track behind. Another matter that tells very strongly against the accused is the fact that whereas he admitted to the assessor that he had a proper set of books including a ledger, he subsequently denied that. There is a multitude of other facts and features in this case that cannot reasonably be explained on a hypothesis that the accused was only a victim, misguided and misinformed, and that he did not intend to evade tax. It would be tedious to enumerate them and I would content myself with the observation that I have carefully considered the answers and explanations sought to be given by accused's Counsel, to the facts relied upon in the petition of appeal and amplified during the argument as indicative of the accused's guilty knowledge and of an intention on his part to evade tax, and I have come to the conclusion that those explanations and answers are far from satisfactory. The cumulative effect of the facts that Rajan stood to gain nothing by suppressing or destroying relevant documents as, it is said, he did ; that the accused's explanation that his business was almost entirely a cash business when it is abundantly clear that it was not ; that to account for the non-disclosure of a very large number of transactions on the large vouchers, many of them initialled by the accused himself, purchases to the extent of some Rs. 20,000 were excluded ; that payments made by the accused by cheque for insurance of goods that were imported by him were not disclosed ; the delay in producing books and documents when called upon to do so ; the subsequent disclosure of expenditure of Rs. 21,000 when the accused found the credit side of his transactions mounting under the Assessor's investigation ; the naive exclamation of his expert Kandavanam " What books for such a small business " when questioned about the accused's books—the cumulative effect of all these facts—to mention only a few—is overwhelmingly eloquent of the accused's guilt.

The Magistrate appears to have misdirected himself in several ways. He makes a point of the fact that the Assessor fixed Rs. 110,000 as the accused's taxable income whereas, on appeal, the Commissioner reduced

[1] (*1945*) *1 A. E. R. 183.*

it to Rs. 38,000. Ergo, it may well be that Rs. 7,500 as shown by the accused was, in reality, the taxable income. But, it must be remembered that they had convincing evidence that the accused had robbed them of what was due to them and were, more or less, acting on the principle *omnia praesumuntur contra spoliatorem*. They could only make rough guesses. It is not a conclusive point, but still not entirely devoid of significance that the accused paid on a Rs. 38,000 basis. Again, the Magistrate finds that it is a point in favour of the accused that he was, at a late stage, able to show that he had not only omitted items on the income side, but also as much as Rs. 21,000 on the expenditure side. But obviously that disclosure was made in pursuance of the instinct of self-preservation. Another point made by the Magistrate as telling in favour of the accused is that when properties of large value bought by the accused during the relevant period were seized by the Commissioner, the accused's brother-in-law claimed them as property held in trust for him and, thereupon, the Commissioner did not pursue the matter further, but the accused, in impressive acknowledgment of his obligation, transferred the property to his brother-in-law. In regard to the Commissioner not pursuing the seizure further all I would say is that he was acting prudently not to be involved in protracted litigation. As for the trust and the transfer that, of course, had to come to justify the ways of the defaulting man to the Commissioner. It is refreshing to encounter the child-like simplicity implied in the acceptance of the accused's story about these purchases. I cannot share that view.

Yet another point made by the Magistrate is that the previous return of the accused showed an income of about Rs. 5,000, and those were not challenged by the Department of Income Tax and therefore Rs. 7,500 shown as the profit for the year in question must be correct. But, surely the fact that a statement is not challenged does not mean that that statement is true any more than that a challenged statement must be necessarily false. It may well mean that, on previous occasions, the accused was more fortunate.

The more one examines this case in all its bearings the more convinced one feels that a case beyond reasonable doubt has been made out against the accused on the charges preferred against him and, in the interest of justice and of public confidence in it, it is necessary to depart from the ordinary rule and to set aside an order of acquittal.

I set it aside and convict the accused and convict him on all three charges.

In regard to punishment, this is a bad case but, in view of the fact that nothing has been proved against him before this case, I will not send him to prison. I sentence him to pay a fine of Rs. 750 on each charge. In default of payment of the fine, two months' rigorous imprisonment on each count. I would invite attention to the ambiguous language in section 87 " shall be guilty of an offence and shall for *each such* offence be liable . . . . to a fine not exceeding the total of Rs. 5,000 ".

Acquittal set aside.