

1959

Present : Sansoni, J.

S. I. MENDIS, Petitioner, and COMMISSIONER OF INCOME TAX,
Respondent

S. C. 302—Application for Revision in M. C. Colombo 49,703/A

Income tax—Recovery of tax in default—Right of assessee to dispute correctness of assessment—Income Tax Ordinance (Cap. 188), ss. 27 (iii), 80 (1) (2) (3).

At the time a notice is issued under section 80 (1) of the Income Tax Ordinance for the recovery of tax the stage has been passed when the assessee can dispute the correctness of an assessment. Relief in that respect is limited to applying for an adjournment under section 80 (2).

APPPLICATION to revise an order of the Magistrate's Court, Colombo.

K. Sivagurunathan, with J. V. C. Nathaniel, for the Petitioner.

Mervyn Fernando, Crown Counsel, for the Respondent.

Cur. adv. vult.

June 22, 1959. SANSONI, J.—

The petitioner applies for the revision of the order of the Chief Magistrate, Colombo, fining her a sum of Rs. 37,458·20 and imposing a default sentence of six months simple imprisonment.

The order was made at the conclusion of certain proceedings which followed upon the issue of a certificate under section 80 (1) of the Income Tax Ordinance, Cap. 188. According to that certificate the petitioner as executrix of the estate of the late Mr. V. S. Samynathan had made default in the payment of Rs. 37,458·20 being income tax due from her. On being summoned under section 80 (1) the petitioner appeared and moved for an adjournment under section 80 (2) which was allowed. Thereafter a certificate under section 80 (3) was received confirming the amount of tax to be recovered as Rs. 37,458·20.

The petitioner then asked for time to show cause under section 27 proviso (3) of the Ordinance, and the matter was fixed for inquiry. At the inquiry the petitioner's counsel sought to show that she was not an executor within the meaning of section 2 of the Ordinance ; that she was not a defaulter within the meaning of section 80 ; and that even if she was a defaulter, her liability was limited to the sum specified in section 27 proviso (3). Crown Counsel who appeared for the Commissioner of Income Tax then raised a preliminary objection : he urged that the petitioner could not show cause in respect of these matters once the certificate under section 80 (3) was filed. The Magistrate upheld the objection and made the order now under consideration.

At the hearing before me the petitioner's counsel sought to raise the same objections. He urged that the petitioner was not an executor as defined in the Ordinance, because no letters of administration had yet been issued to her; and that even if she had defaulted in paying tax, her liability should be limited to the sum mentioned in section 27 proviso (3). Crown Counsel submitted that the grounds which the petitioner sought to put forward should have been put forward at an earlier stage, when her liability to tax was assessed, and that she should have had recourse to the provisions for appealing if she was dissatisfied with the assessment.

I think that Crown Counsel's objection must be upheld. At the time a notice is issued under section 80 (1) the stage has been passed when the assessee can dispute the correctness of an assessment. Relief in that respect is limited to applying for an adjournment under section 80 (2). A defaulter is not precluded from showing that the Magistrate has no jurisdiction, because his last known place of business or residence does not fall within the local jurisdiction of the Magistrate; he may also show that he has paid the tax due; or that he is not a defaulter, in that he is not the person assessed. But it is not open to him to question the correctness of the amount specified in the certificate.

The petitioner's counsel at the final stage of his reply drew my attention to the judgment of H. N. G. Fernando J. in *Puswella v. Commissioner of Income Tax*¹. My brother there held that a defaulter showing cause was entitled to show that the default in payment was due to causes beyond his control *and* that there was no lack of good faith on his part *and* that at the time when section 80 is invoked the defaulter has not the means to make payment, and if these special circumstances are made out a Magistrate would desist from imposing the penal sanction of imprisonment on default of payment of the tax. It is not necessary in this case for me to express my views on this question, because it does not appear that the petitioner sought to show cause on any of these grounds; and I should like to reserve my opinion on the point.

The application is dismissed.

Application dismissed.

¹ (1958) 60 N. L. R. 497.
