

EMMANUEL
v.
THE COMMISSIONER-GENERAL OF INLAND REVENUE

COURT OF APPEAL
S. N. SILVA, J. AND, D. P. S. GUNASEKERA, J
C. A. APPLICATION No. 390/90-
D. C. COLOMBO No. 37090/TAX

INCOME TAX—ORDER VARYING INSTALMENTS ALREADY ORDERED

Once the Court orders instalments in an application for recovery of taxes due on the Commissioner-General's certificate, it would be an error in Law to alter the quantum of instalments without any application being made by the Commissioner-General of Inland Revenue and without any proof of altered circumstances.

APPLICATION in Revision of the order of the District Court of Colombo.

Mahinda Ralapanawe for petitioner

May 11, 1990

S. N. SILVA, J.

We have heard Counsel in support of this application. The Petitioner has filed the application in Revision in respect of the order dated 30.04.1990, made by the learned Additional District Judge of Colombo. Proceedings in this case commenced before the District Court of Colombo for recovery of taxes due on the certificate dated 06.05.1988 which is produced marked as "X1". The Petitioner was granted an adjournment in view of an appeal that had been filed but that there was no variation in the sum that was due. Thereafter the petitioner admitted liability on 10.10.89 and the learned Additional District Judge imposed the said sum due as a fine and sentenced the petitioner to a term of 6 months simple Imprisonment in default of the payment of the fine. The learned Additional District Judge permitted the petitioner to pay the sum in instalments of Rs. 3,000/- per month. These instalments were paid on 16.11.89, 08.01.90 and 30.04.90. On the last date that is mentioned the learned Additional District Judge directed that the next instalment should be a sum of Rs. 10,000/=. Counsel submits that no application was made by the Commissioner-General of Inland Revenue to enhance the instalment and that no inquiry was made as to whether there were altered circumstances that warranted the recovery of a higher instalment. It is also submitted that there were no proceedings other than what is reflected in the journal entry dated 30.4.1990. In the circumstances we are of the view that the learned Additional District Judge erred in law in altering the instalment that had already been ordered without any application being made by the Commissioner-General of Inland Revenue and without proof of any altered circumstance. We accordingly act in revision and set aside the order of the learned Additional District Judge that directed the petitioner to pay a sum of Rs. 10,000/= on 31.05.90. We substitute in that place an order directing the petitioner to pay a sum of Rs. 3,000/= on 31.05.1990 and direct him to pay the sum out standing in instalments of Rs. 3,000/= per month on dates that will be fixed by the learned Additional District Judge. The application is allowed.

D. P. S. GUNASEKERA, J. — I agree.

Application allowed.