

1973

Present: Wijayatilake, J.

THE ATTORNEY-GENERAL, Appellant, and S. J. F. FERNANDO,  
Respondent

S. C. 919/71—M. C. Negombo, 43259

*Income tax—Notice of assessment issued to a person—Failure of assessee to furnish return—Court in which the assessee is liable to be prosecuted for his default—Inland Revenue Act No. 4 of 1963, ss. 82 (1), 111, 118 (1) (a).*

Where a person who receives a notice from an Assessor requiring him to furnish at the Regional Office a return of his income fails to post such return, the jurisdiction of the Court in which he is liable to be charged under section 82 (1) read with section 118 (1) (a) of the Inland Revenue Act No. 4 of 1963 for his default is determined by the place where the Assessor's Regional Office is situated and not by the place of residence of the assessee.

**A**PPEAL from an order of the Magistrate's Court, Negombo.

*Faiz Mustapha*, State Counsel, for the Attorney-General.

Accused-respondent absent and unrepresented.

*Cur. adv. vult.*

January 22, 1973. WIJAYATILAKE, J.—

This Appeal raises a question of jurisdiction. The accused was charged under section 82 (1) read with section 118 (1a) of the Inland Revenue Act No. 4 of 1963 for failing to furnish at Negombo within the jurisdiction of the Magistrate's Court, Negombo a Return of his income, wealth and gifts and that of his family for the year of assessment 1968-69 as required by a notice in writing dated 7.5.68 given to him by an Assessor of the Department of Inland Revenue.

The accused pleaded "not guilty" to the charge and on the date of trial before the prosecution adduced evidence an objection was taken *in limine* to the jurisdiction of the Magistrate's Court, Negombo, to try the accused, his place of residence being Wennappuwa within the jurisdiction of the Magistrate's Court, Chilaw, and therefore the offence, if any, could only have been committed at Wennappuwa outside the jurisdiction of the Magistrate's Court, Negombo.

Counsel who had appeared for the accused admitted that the accused had not furnished the Return as required. The notice referred to in the charge has not been produced. However, the admission referred to above, in effect, clearly indicates that the

notice issued by the Assessor from his Regional Office at Negombo as set out in the charge had been duly received by the accused and he has ignored it. The question therefore arises whether the Magistrate's Court, Negombo, had the jurisdiction to entertain the plaint in this case.

The learned Magistrate has upheld the objection and discharged the accused. He has taken the view that proof of due posting completes the obligation of a person who has been noticed as in the instant case and therefore the offence alleged would have been committed at Wennappuwa, the residence of the accused as he had failed to post his Return. He proceeds to hold that proof of posting completes the obligation and that there is no burden on the accused to prove the receipt of the Return at the Regional Office or at the Head Office in Colombo.

The Magistrate appears to have taken this view in the light of the predicament of a person who has duly posted a Return but the addressee insists on its non-receipt. He proceeds to observe that "once it is conceded that proof of due posting is proof of furnishing the Return, an omission when it occurs, would be in terms relevant to acts done or omitted by a person in the locality of his residence. The offence then of failure to furnish a Return one can conclude arises in the area of his residence".

In the instant case the accused has admittedly not posted a Return. Learned State Counsel submits that on the notice issued the accused had to furnish his Return at the Regional Office, Negombo, and the accused has admittedly failed to make this Return as contemplated. In the circumstances, the residence of the accused would be immaterial. What is necessary is the "provision or supply" of the Return at the Regional Office. The relevant "locus" for the purpose of jurisdiction is Negombo. He submits that there is no provision in the Inland Revenue Act setting out the jurisdiction in regard to an offence of this nature. Section 111 of the Act which provides for a Magistrate within whose jurisdiction the defaulting tax payer had his last known place of business or residence to entertain certificates from the Commissioner of Inland Revenue only refers to the procedure in regard to the recovery of the taxes imposed. He relies on the judgments *In re Abu Baker*<sup>1</sup> 52 N. L. R. 286 and *Ponnudurai v. Ratnaweera*<sup>2</sup> 67 N. L. R. 501; and Section 106 (1) of the Companies Ordinance, Vol. 6, at page 126.

I am inclined to agree with State Counsel that section 111 has no application at this stage. I also agree with him that in terms of the notice, the receipt of which is admitted, that the accused

<sup>1</sup> (1950) 52 N. L. R. 286.

<sup>2</sup> (1964) 67 N. L. R. 501.

had to furnish the Return at Negombo and on his failure to do so the Magistrate, Negombo, was entitled to entertain the plaint. If the accused had posted his Return at any Post Office in Negombo, Chillaw or elsewhere and there was proof of such posting the receipt of the Return may well be presumed under section 114 of the Evidence Ordinance.

I am unable to agree with the learned Magistrate that the omission on the part of the accused to send the Return would be in terms relevant to an act done or omitted by him in the locality of his residence only. As I have already held the Magistrate's Court, Negombo, has jurisdiction to entertain these proceedings. The question may arise whether the Magistrate's Court, Chillaw, or any other Magistrate's Court also has jurisdiction. In this connection I might refer to sections 135-138, 142 and 145 of the Criminal Procedure Code. In this context the last known place of business or residence may be relevant. However, I do not think it necessary for me to answer this question in these proceedings.

I would accordingly set aside the Order of the learned Magistrate and send the case back for Trial *de novo* before another Magistrate.

*Order set aside.*

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