

1955

*Present*: K. D. de Silva, J.

J. A. BAHARAN, Petitioner, and D. G. OBEYSEKERA (Assistant Commissioner of Income Tax), Respondent

*S. C. 690 of 1954—Application for a Mandate in the nature of a Writ of Mandamus*

*Income Tax Ordinance (Cap. 188)—Appeal against assessment—Notice of objection—Conditions which such notice must satisfy—Failure to furnish return of income—Requirements necessary there—Sections 64 (3), 69 (1) (2) (3), 80 (1) (3).*

Where an assessee fails to state precisely his grounds of objection against the assessment and merely lodges "an emphatic protest", such protest is not a notice of objection within the meaning of section 69 (1) of the Income Tax Ordinance. Nor is it within the power of the Commissioner to waive the requirements which are set out in section 69 (1) in regard to notice of objection.

Further, under the second proviso to section 69 (1) of the Income Tax Ordinance, if the assessment appealed against was made in the absence of a return of income, the return of income must be tendered within the period allowed for filing the notice of objection. Failure to tender the return of income would render the notice of objection invalid.

**A**PPPLICATION for a writ of *mandamus*.

*S. Ambalavanar, with E. B. Vannitamby, for the petitioner.*

*J. W. Subasinghe, Crown Counsel, for the respondent.*

*Cur. adv. vult.*

September 22, 1955. DE SILVA, J.—

The petitioner complains, firstly, that the respondent who is the Assistant Commissioner of Income Tax, Unit 3, wrongly refused to admit his appeals and make his order in terms of Section 69 (2) of the Income

Tax Ordinance (Cap. 188) and secondly, the respondent refused to consider his objections before issuing a Certificate under Section 80 (3). He therefore seeks to obtain from this Court a Mandate in the nature of a Writ of Mandamus directing the respondent (1) to admit the appeals and make his order in terms of Section 69 (3) or (2) to consider the objections, make his decision thereon, and issue a Certificate to the Magistrate's Court, Colombo South, in terms of Section 80 (3). The respondent opposes this application.

Although the petitioner originally made this application in respect of the years of assessment 1948/1949, 1949/1950, 1950/1951, 1951/1952 and 1952/1953 his Counsel, at the hearing, restricted the matter to the last mentioned 3 years of assessment.

The petitioner did not furnish returns of income in respect of these 3 years to the Commissioner of Income Tax. Accordingly, the Assessor in terms of Section 64 (3) estimated the petitioner's assessable income and assessed him accordingly, and notices of assessment dated 17th August, 1953, were sent by registered post to the petitioner to his address at No. 22, Gorakapola, Panadura. These notices of assessment called upon the petitioner to pay Rs. 1,585, Rs. 1,300 and Rs. 2,475 respectively. Section 69 (1) provides that any person aggrieved by the amount of assessment made under this Ordinance is entitled to appeal to the Commissioner against the assessment by giving notice of objection in writing within 21 days of the date of notice of the assessment. Section 63 (3) enacts that any notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course by post. So that these notices should be deemed to have been served on the petitioner on the 19th August, 1953. The petitioner did not appeal to the Commissioner within 21 days from that date. He however addressed the letter R1 dated 31st October, 1953, to the Commissioner stating that he received the notices of assessment only two days earlier. He also in that letter objected to the assessments in the following terms:—

“ I hereby lodge an emphatic protest at your assessment of my income for these years. Details of these particulars will be forwarded to you shortly. ”

That the petitioner received the notices only on the 29th October, 1953, is not denied by the Commissioner. Therefore the period of 21 days contemplated by Section 69 (1) has to be calculated from 30th October, 1953. The petitioner did not take any further steps within 21 days from 30th October, 1953, although in R1 he had undertaken to furnish the particulars shortly. The Commissioner thereafter on 3rd September, 1954, issued in terms of Section 80 (1) the Certificate R2 to the Magistrate, Colombo South, certifying that a sum of Rs. 8,115 was due as income tax. The Magistrate on receipt of this Certificate issued summons on the respondent who appeared in Court on 10th October, 1954, and obtained an adjournment till 13.11.54, under Section 80 (2) to enable him to submit objections to the Commissioner. Nothing appears to have been done

during this period of adjournment. When the petitioner appeared in Court on 13.11.'54 the Magistrate made the following order:—

“Amount confirmed. I call upon him to pay. Time till 4/12.” On 4.12.'54 the petitioner's Counsel submitted to Court that his client was not liable to pay the full amount and moved for another adjournment. The learned Magistrate refused this application and sentenced the petitioner to 3 months' simple imprisonment. On the same day the petitioner filed an appeal against that order and also paid an instalment of Rs. 100 out of the amount due. Certain other payments were also made on subsequent dates. The petitioner filed the present application for a Writ of Mandamus on 17.12.'54.

It is contended on behalf of the petitioner that the letter R1 is a notice of objection contemplated by Section 69 (1) and that by that notice the petitioner preferred an appeal to the Commissioner. It is also submitted on his behalf that on R1 being filed, the Commissioner should have proceeded under Section 69 (2) and, if no agreement was reached between parties, he should have in terms of Section 69 (3) fixed a time and place for the hearing of the appeal. The learned Crown Counsel argued that R1 cannot be regarded as a valid notice of objection contemplated by Section 69 (1) and that even if it was so regarded it ceased to be valid because the relevant returns of income were not filed by the petitioner within 21 days from 30.10.'53. As this argument involves the interpretation of Sub-Sections 1 and 2 of Section 69 I will quote those two Sub-Sections in full:—

(1) Any person aggrieved by the amount of an assessment made under this Ordinance may within twenty-one days from the date of the notice of such assessment appeal to the Commissioner by notice of objection in writing to review and revise such assessment. Any person so appealing (hereinafter referred to as the appellant) shall state precisely in his notice the grounds of his objection and the notice shall not be valid unless it contains such grounds and is made within the period above mentioned:

Provided that the Commissioner, upon being satisfied that owing to the absence from Ceylon, sickness, or other reasonable cause the appellant was prevented from giving notice of objection within such period, shall grant an extension thereof:

Provided further that, where the assessment appealed against has been made in the absence of a return of income by the appellant, no notice of objection shall be valid unless and until such return has been duly made.

(2) On receipt of a valid notice of objection under sub-section (1), the Commissioner may cause further inquiry to be made by an Assessor, and if in the course of such inquiry an agreement is reached as to the amount at which the appellant is liable to be assessed, any necessary adjustment of the assessment shall be made.

Section 69 (1) enacts that the appellant “shall state precisely the grounds of objection in the notice”. The learned Crown Counsel submits that no grounds of objection, whatever, are set out in R1. That submission

cannot be assailed. By R1 the petitioner merely lodged "an emphatic protest". That surely is not a ground of objection. The Counsel for the petitioner however contends that the respondent is not entitled to take this objection because he did not raise it earlier. According to him, the only ground urged by the respondent against the validity of R1 was that the returns of income were not filed within 21 days as contemplated by proviso 2 Section 69 (1). It is true that in the affidavit filed by the respondent he did not specifically take up the position that R1 was an invalid notice for want of the necessary particulars. However, even if the respondent treated R1 as a valid notice it is clear that he was not entitled in law to treat it as such. Section 69 (1) not only requires that the grounds of objection should be set out precisely in the notice but it proceeds to state further,

"And the notice shall not be valid unless it contains such grounds and is made within the period above-mentioned."

The Commissioner cannot confer validity on a notice which is intrinsically invalid. It is not within his power to waive the requirements which are unequivocally set out in Section 69 (1) in regard to this notice. Therefore the Commissioner was entitled to ignore R1. On this ground alone the petitioner's application must fail because the petitioner also failed to appear before the Commissioner as required by the latter or to submit his objections to him in terms of Section 80 (2). If R1 cannot be regarded as a valid appeal the petitioner was entitled to claim relief under Section 80 (2). This he has failed to do.

Even if it is assumed that R1 is a valid notice of objection—which I am not prepared to concede—the petitioner is still confronted with another difficulty in that he failed to furnish the returns of income within a period of 21 days calculated from 30.10.'53. Indeed, he furnished these returns only on 19th November, 1954. The Counsel for the petitioner however contends that Section 69 (1) does not require that the returns of income should be filed within 21 days. According to him it is sufficient if the notice of objection alone is filed within that period. His argument is that if the notice of objection is filed within 21 days, it remains in a state of suspense, as if it were, ready to be invested with validity once the return of income is filed. There is no time limit within which the return of income is to be filed, according to him. He also submits that although the 1st proviso of Section 69 (1) empowers the Commissioner to extend the period of 21 days for filing the notice of objection there is no similar provision in regard to the filing of the return of income. I am unable to share his view that the appellant is entitled to file the return of income after the expiry of the period within which the notice of objection has to be filed. Section 69 (1), *inter alia*, enacts that the notice shall not be valid unless it is made within 21 days. The 1st proviso, as I observed earlier, empowers the Commissioner, in certain instances, to extend the period of 21 days. It is only a notice of objection which is filed within the 21 days or within the extended period that is valid. But according to the 2nd proviso to Section 69 (1) even a notice of objection filed within the prescribed time becomes invalid "unless and until" the return of income is duly made. The word

“ until ” appearing in this proviso shows that the return of income need not necessarily be filed with the notice of objection. The word “ unless ” occurring in the same proviso, however, makes it clear that the return of income should be filed within the period allowed to tender the notice of objection. A notice of objection which is otherwise valid loses its validity unless there is a return of income to support it. If no extension of time is granted for filing the statement of objection the last day on which it can be filed is the 21st day from the relevant point of time. If on the 21st day it is found that the notice of objection has been filed within the prescribed period but no return of income has been tendered, then the notice of objection is clearly invalid.

A notice of objection to be valid must satisfy the following requirements :—

1. It must be in writing and addressed to the Commissioner.
2. It must be filed within the prescribed time.
3. It must set out the grounds of objection precisely.
4. If the assessment appealed against was made in the absence of a return of income the return of income must be tendered within the period allowed for filing the notice of objection.

It is only a notice of objection which satisfies the above requirements which would constitute a valid appeal against the assessment.

Accordingly, even if R1 is a proper notice of objection, it is invalid for the reason that the petitioner had failed to tender his return of income within 21 days from 30.10.'53. Therefore the respondent was justified in refusing to make an order under Section 69 (2).

For these reasons I dismiss the application with costs.

*Application dismissed.*

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