

1968

Present : Wijayatilake, J.

S. VAIRAYAN NADAR, Appellant, *and* THE COMMISSIONER OF
INLAND REVENUE, Respondent

S. C. 241/68, with Application 355/68—M. C. Galle, 50799

*Income tax—Proceedings for recovery of it—Order for payment by instalments—
Permissibility.*

In proceedings for the recovery of income tax due, payment by instalments may be ordered if the assessee has made no attempt to evade the payment of the tax and the circumstances are such that he should be granted relief.

¹ (1820) 4 B. & Ald. 95 at 120.

³ (1942) 43 N. L. R. 241.

² (1950) A. C. 203.

⁴ (1952) 51 N. L. R. 465.

⁵ (1953) 55 N. L. R. 514.

APPEAL, with application in revision, from an order of the Magistrate's Court, Galle.

S. Ambalavanar, with *C. Tittawella* and *W. H. Perera*, for the respondent-appellant in the appeal and for the petitioner in the application.

Lalith Rodrigo, Crown Counsel, for the Attorney-General.

October 4, 1968. WIJAYATILAKE, J.—

This is an appeal with an application in revision in respect of an order made by the learned Magistrate imposing a term of six months' simple imprisonment for failing to pay the balance income tax due in full. Learned Crown Counsel takes a preliminary objection to the hearing of the appeal and the application in revision. Learned counsel for the appellant concedes that there is no right of appeal but he submits that he is entitled to pursue his application in revision. Crown Counsel submits that even this application in revision cannot be maintained owing to the inordinate delay in presenting it. He relies on the case of *Tirimanne v. Commissioner of Income Tax*¹. In my view this can be distinguished. There is a substantial explanation for the delay in the instant case. I would therefore overrule the objection.

Mr. Ambalavanar has referred me to the proceedings before the learned Magistrate and he submits that the Magistrate was in error when he refused to accept instalments of Rs. 6,000 which the respondent wanted to pay on 21.12.67 in respect of this case and the two other cases called on this date. He refers me to the case of *de Jong v. Commissioner of Income Tax*² which sets out the stage at which a penalty may be imposed. It would appear that the learned Magistrate appears to have been inclined to send the respondent to jail rather than collect the arrears of taxes of which a substantial part was in fact available and which the respondent offered to pay. The fact that the respondent had brought a sum of Rs. 6,000 to Court would show his good faith and in those circumstances in my opinion the learned Magistrate should not have abruptly imposed the penalty of 6 months' imprisonment which was to say the least most injudicious.

Mr. Ambalavanar states that in regard to the assessment the matter was at that stage under appeal and is still pending before the Commissioner of Inland Revenue and there has been no delay in pursuing this matter on the part of the petitioner. He also states that a sum of nearly Rs. 35,000 is available in deposit to the credit of this case and the other two cases on today's list subject to his appeal to the Commissioner.

¹ (1957) 59 N. L. R. 304.

² (1955) 57 N. L. R. 279.

He submits that this factor merits consideration to show that there has been no attempt to evade the payment of taxes due. In all these circumstances I think this is a case in which the petitioner should be granted relief.

I would accordingly vacate the order of the Magistrate refusing to grant payment of the taxes due in instalments and the order committing the petitioner to imprisonment. I would make order permitting the petitioner to pay the taxes due in monthly instalments of Rs. 2,500 on or before the 10th of each month commencing 10th November, 1968.

Order varied.

