

1954

Present : Sansoni J.

B. H. WILLIAM, Appellant, and COMMISSIONER OF  
INCOME TAX, Respondent

*S. C. 343 with Application 468—M. C. Colombo, 249*

*Income tax—Proceedings for recovery before Magistrate—Power of Magistrate to grant an adjournment—Certificate of Commissioner—Necessary particulars—Income Tax Ordinance (Cap. 188), ss. 76 (5), 80 (1) and (2).*

Acting under section 80 (1) of the Income Tax Ordinance the Commissioner of Income Tax issued a certificate to a Magistrate certifying that a person had made default in payment of income tax. The total tax in default and the sums added for non-payment under section 76 (5) were mentioned as particulars at the foot of the certificate. When the assessee appeared before the Magistrate his application for an adjournment was refused on the ground that an appeal against the assessment was pending.

*Held*, that under section 80 (2) of the Income Tax Ordinance the power of a Magistrate to grant an adjournment was restricted and could not be exercised in a case where an appeal against the assessment had been filed.

*Held further*, that the particulars given in the certificate of the Commissioner were sufficient. Even if they were not sufficient, the Magistrate had jurisdiction in his discretion to order further particulars to be furnished.

**A**PPPEAL, with application in revision, from an order of the Magistrate's Court, Colombo.

*H. V. Perera, Q.C.*, with *W. D. Gunasekera* and *W. P. N. de Silva*, for the appellant-petitioner.

*Vincent Thamotheram*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

November 2, 1954. SANSONI J.—

The Commissioner of Income Tax issued a certificate to the Magistrate, Colombo, certifying that the present petitioner has made default in payment of Rs. 536,499·98 cts. being income tax due from him. The following particulars appear at the foot of the certificate :

	Rs.	c.
Total Tax in default ..	447,084	98
Sums added for non-payment under section 76 (5), Cap. 188 ..	89,415	0
	536,499 98	

The petitioner was summoned to appear in Court on 10.3.54. He appeared and the Magistrate directed the case to be called on 25.3.54. having made the entry "Appeal pending". On 25.3.54 the Magistrate

made the order : " As respondent has appealed he is not entitled to adjournment under section 80 (2). So the respondent should pay this amount. Payment on 31.3.54." The petition of appeal against this order was filed on 26.3.54, but as there was no right of appeal papers were later filed to have this order revised. Two points were urged against the order : firstly, that the Magistrate was wrong in supposing that he had no discretion to adjourn the matter : secondly, that the certificate did not comply with the provisions of section 80 (1), Cap. 188, because there were no particulars of the tax in default. In regard to the first submission, the general principle is well established that an adjournment or refusal of an adjournment is a matter which prima facie is entirely within the discretion of a judge. A court has an inherent power to direct that any matter which comes before it should stand over for a period if the Court thinks that that is the proper way to deal with the matter. Romer, L.J., referred to this principle in the case of *In re Yates Settlement Trust*<sup>1</sup>. But having regard to the terms of section 80 (2) of the Income Tax Ordinance which in terms deals with the question of adjourning a matter such as this, I am doubtful whether the discretion to adjourn, which is ordinarily vested in a Magistrate, is not limited in such a case. Section 80 (2) empowers the Magistrate to adjourn such a matter " for not more than thirty days to enable such person to submit to the Commissioner his objection to the tax ", but this is a power conferred only in a case where no appeal against the assessment has been filed. This provision seems to me by implication to divest the Magistrate of a discretion to adjourn the matter in other cases or for any longer period. The matter is of secondary importance in the present proceedings because the petitioner has, by filing an appeal, obtained very much more time than any judge would have granted him even if he had a discretion in the matter.

In regard to the second submission, the relevant portion of section 80 (1) reads :—

" Where the Commissioner is of opinion in any case that recovery of tax in default by seizure and sale is impracticable or inexpedient, or where the full amount of the tax has not been recovered by seizure and sale, he may issue a certificate containing particulars of such tax and the name and last known place of business or residence of the defaulter to a Magistrate having jurisdiction in the division in which such place is situate."

The provisions of section 76 (5) are also relevant. They read :—

" Where any tax is in default, the Commissioner may in his discretion order that a sum or sums not exceeding twenty per centum in all of the amount in default shall be added to the tax and recovered therewith."

It was submitted that the particulars required to be specified in the certificate were not merely particulars of the actual tax and the penalty separately, but particulars about the actual tax itself, such as, the year for which it was due, and where it was due in respect of more than one

<sup>1</sup> (1954) 1 W. L. R. 364.

year, then the particular amount due for each year. Now it seems to me that when the Commissioner acting under section 76 (5) adds a sum or sums, the entire amount may be recovered in one proceeding under section 80 (1), and the amount to be so recovered is the "tax in default". The sum so added is thus also recoverable as "tax in default", the actual tax apart from this penalty not forming the only permissible subject of the certificate. It follows then that "particulars of such tax" could be particulars specifying separately the actual tax and the penalty. In this view of the matter it could be said that the certificate under consideration does contain particulars.

But I also take the view that the question of the sufficiency or otherwise of the particulars contained in a certificate is not a fundamental matter affecting the jurisdiction of the Magistrate. I regard it rather as a matter which the defaulter should raise when he is summoned and asked to show cause. If he is taken by surprise through want of sufficient particulars, he should say so at that stage, and I have no doubt that in such a case the Magistrate has jurisdiction in his discretion to order further particulars to be furnished. Such cases will probably be rare, for there would have been earlier proceedings, to which the defaulter would have been a party, and it is only at the final stage that a certificate under section 80 (1) is issued. Since the petitioner made no complaint regarding the adequacy of the particulars in the certificate under consideration he must be taken to have been well satisfied with them.

I see no reason to interfere with the order of the Magistrate. The petitioner has already obtained far too much time and the Magistrate will take the necessary action to recover the amount in default.

*Appeal and Application dismissed.*

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