1957 *Present :* Weerasooriya, J. and Sansoni, J.

TIRIMANNE, Petitioner, *and* COMMISSIONER OF INCOME TAX, Respondent

S. C. 366—Application in Revision in M. C. Gampaha, 30,205

Income Tax Ordinance (Cap. 188)—Section 80 (1)—Order made thereunder—Application to Supreme Court to revise it—Effect of delay in filing it.

An application to revise an order made by a Magistrate under section 80 (1) of the Income Tax Ordinance will not be entertained if there is inordinate delay in filing it.

APPLICATION to revise an order made by the Magistrate's Court, Gampaha.

S. Ambalavanar, for the petitioner.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 11, 1957. WEERASOORIYA, J.—

This is an application to revise an order made by the Magistrate of Gampaha calling upon the petitioner to pay a sum of Rs. 15,359·01 as a fine under the provisions of section 80 (1) of the Income Tax Ordinance (Cap. 188) and imposing on her a term of simple imprisonment in default of payment within the time specified in the order. The said sum represents excess profits duty due from one K. V. E. Tirimanne who died on the 7th August, 1950, and which the petitioner was held liable to pay as the executrix under his last will, letters of administration having issued to her in that capacity in D. C. Colombo No. 14,000 (Testamentary).

In the connected application No. 367 the petitioner seeks to revise a similar order made in respect of a sum of Rs. 8,771·69 due from the deceased as income tax. The substantial objections taken by the petitioner to these orders are that even conceding her knowledge of the assessments to tax made against the deceased she has since distributed the assets of the estate (valued at Rs. 280,737) and that certain provisions of the Income Tax Ordinance were not complied with and she is not, therefore, liable to be dealt with under section 80 (1) of that Ordinance.

Learned Crown Counsel appearing for the respondent took a preliminary objection before us that there was unreasonable delay on the part of the petitioner in making these applications and that the Court should therefore not entertain them. The ground of objection is that while the orders in question were made on the 15th December, 1956, the applications (both undated) were not filed till the 24th July, 1957.

The excuse put forward by petitioner's counsel for the delay is that in the first instance an appeal was filed against each of the orders complained of on the same date on which they were made. But as far back as 1933, in the case of *The Commissioner of Income Tax v. de Vos* [1] this Court held that no appeal lay from an order made by a Magistrate under section 80 (1) of the Income Tax Ordinance. The ruling in that case has never been questioned as far as I am aware and has been consistently followed in a number of later cases. See, for example, *Vaz v. Commissioner of Income Tax* [2], *de Silva v. Commissioner of Income Tax* [3], *William v. Commissioner of Income Tax* [4] and *De Jong v. Commissioner of Income Tax* [5]. It is clear that in view of these decisions the proper course which the petitioner should have adopted if she wished to obtain relief from the orders was to file an application in revision as has now belatedly been done. Even if the petitioner's legal advisers were, quite inexcusably, ignorant of the decisions referred to, at the time that the appeals were filed the Magistrate made a minute in the journal (which they could not have failed to note) that there was no right of

[1] *(1933) 35 N. L. R. 349.*
[2] *(1945) 46 N. L. R. 200.*
[3] *(1951) 53 N. L. R. 280.*
[4] *(1954) 56 N. L. R. 257.*
[5] *(1955) 57 N. L. R. 279.*

appeal. He, however, made order, as he was bound to do, that the appeals be forwarded to this Court in due course. The appeal in the case to which the present application relates was rejected by this Court on the 10th of April, 1957. The appeal in the connected case was rejected on the 9th April, 1957. In both appeals there was no appearance for the appellant. Even though the petitioner was not represented at the hearing of the appeals it is too much to believe that she did not come to know of the orders rejecting them soon afterwards. One would have expected that in the circumstances, if she had a genuine grievance which cried for redress, she would have immediately taken the appropriate steps as indicated earlier. On the contrary, a further three months elapsed before the applications under consideration were filed. By these dilatory tactics the petitioner has gained much more time than was granted by the Magistrate for the payments of the amounts due. It is clear that if these applications had been filed soon after the orders complained of were made they would have been disposed of long ago.

The question that arises, therefore, is whether having regard to this inordinate delay the present applications should be entertained by this Court with a view to the exercise of its discretionary power to revise the orders which were made by the Magistrate on the footing that the petitioner is liable to be dealt with under section 80 (1) of the Income Tax Ordinance in respect of the amounts due as tax.

In this connection it is necessary, I think, to reject, once and for all, the plea put forward by learned counsel for the petitioner that the delay in making these applications should not be held against her because she may have filed the appeals in the expectation that even if they were rejected this Court would consider her objections to the orders appealed from in the exercise of its revisionary powers. But while there is no doubt that it is open to this Court to exercise these powers when an illegal or otherwise improper order of a subordinate Court is brought to its notice in the course of an appeal, I do not see how any party who deliberately elects to adopt a remedy which repeatedly has been held not to be the correct one can, when the question of delay arises as a relevant consideration, ask to be excused for not having in the first instance availed himself of the proper remedy.

In the case of *The Attorney-General v. Kunchikambu* [1] this Court was invited in the exercise of its revisionary powers to set aside a sentence of a fine imposed on an accused and impose a sentence of imprisonment as required by the relevant penal provision of law under which he had been convicted. The sentence was passed about three months prior to the making of the application in revision, and a further two months had elapsed when the application was heard. Although the judgment suggests that the delay was one of the grounds for refusing the application it would appear that it was the sole ground. No doubt, in that case the application if allowed would have resulted in the accused

[1] *(1945) 46 N. L. R. 401.*

receiving a more severe sentence than that imposed, but I do not think that the question of delay is relevant only in such a case.

In my opinion this application should not be entertained in view of the delay in filing it and is dismissed with costs fixed at Rs. 52·50.

SANSONI, J.—I agree.

Application dismissed.