1954 *Present :* **Swan J.**

A. L. M. A. HAMID **MARIKAR**, Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent

S. C. 369, with Application 69—M. C. Kalutara, 15,789

Excess Profits Duty—Proceedings for recovery—Notice of assessment—Time-limit for service—Form of notice—Income Tax Ordinance, ss. 68 (1), 80 (1).

Notice of assessment of Excess Profits Duty need not be served on the assessee before the last day fixed for assessment ; it may be served subsequently.

A defect in the notice would be cured by section 68 (1) of the Income Tax Ordinance if in substance and effect the notice informs the assessee that he is required to pay the amount of the assessed levy.

APPEAL, with application in revision, from a judgment of the Magistrate's Court, Kalutara.

H. V. Perera, Q.C., with *H. W. Tambiah* and *H. L. de Silva*, for the assessee appellant.

G. F. Sethukavalar, for the respondent.

Cur. adv. vult.

December 13, 1954. SWAN J.—

There is no right of appeal in this case, but as papers have been filed in revision as well I shall consider the matter. The respondent issued a certificate to the Magistrate of Kalutara under Section 80 (1) of the Income Tax Ordinance as applicable to the Excess Profits Duty Ordinance No. 38 of 1941 for the recovery of a sum of Rs. 8,470 as excess profits duty from the appellant. The appellant duly appeared on summons and desired to show cause and the matter was fixed for inquiry. The appellant sought to prove that he was not a defaulter inasmuch as (i) the notice of assessment was not duly served on him but on his former partner A. L. M. A. Rahiman Marikar and (ii) the notice of assessment was served out of time. The learned Magistrate held against the appellant on both these points and imposed the amount of the assessed levy as a fine.

At the hearing of this appeal the same two points were raised. I shall first deal with the submission that the notice was served out of time. According to the Excess Profits Duty Ordinance as amended and extended the assessment had to be made before the 31st December, 1950. Mr. Perera contended that the notice of assessment should have been served also before that date. Mr. Sethukavalar who appeared for the respondent maintained that all that the Ordinance required was that the assessment should in fact have been made before the end of December, 1950, but the notice of assessment could be served at any time thereafter.

In this connection he cited to me the case of *Pickford v. The Commissioner of Inland Revenue* [1] which supports his contention. A passage from "The Law and Practice of Income Tax" by Sri Kanga and Palkavala at page 581 referred to by the learned Magistrate in his judgment makes the position quite clear. I would therefore hold that the assessment was not made out of time.

The next point to consider is whether the appellant had notice of the assessment. The original notice has been produced by the respondent and is marked R5. That it was received by the appellant there can be no doubt. It is addressed to both partners. At the top is typed "For the information of A.L. Abdul Hamid Marikar". If, as Mr. H. V. Perera contends, it was an "information copy" it is none the less a notice of assessment. But even if there are any mistakes, defects or omissions in it, or it is lacking in form it would be cured by Section 68 (1) of the Income Tax Ordinance if it is in substance and effect a notice that the assessee was required to pay the amount of the assessed levy.

The appeal is rejected and the application in revision refused.

Appeal rejected and revision refused.

[1] *13 Tax Cases 251.*