

1963

Present : Sansoni, J.

L. C. H. PEIRIS, Appellant, and THE COMMISSIONER OF  
INLAND REVENUE, Respondent

*S. C. 596/63, with Application 390—M. C. Kalutara, 47649*

*Income Tax Ordinance (Cap. 188)—Additional assessments—Wrong section quoted by Commissioner in support—Proceedings for recovery—Validity of certificate issued to Magistrate—Sections 64 (2) (a), 64 (2) (b), 65, 68 (1), 80 (1), 85.*

Where, having accepted an assessee's return and made an assessment in terms of section 64 (2) (a) of the Income Tax Ordinance (Cap. 188), the Commissioner subsequently purports to make additional assessments under section 64 (2) (b) when the correct procedure is to make them under section 65, a certificate issued to the Magistrate in recovery proceedings under section 80 (1) is not invalidated by the Commissioner's mistake. Besides, in such a case, the assessee must seek his redress by way of appeal before the authorities set up by the Ordinance.

"It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power."

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

*N. E. Weerasooria, Q.C.*, with *N. E. Weerasooria (Jnr.)*, for the Appellant.

*V. C. Gunatilaka*, Crown Counsel, for the Respondent.

*Cur. adv. vult.*

December 9, 1963. SANSONI, J.—

The Assistant Commissioner of Inland Revenue, acting under section 80 (1) of the Income Tax Ordinance, Cap. 188, issued a certificate to the Magistrate certifying that the appellant (who has also applied in revision) had made default in the payment of Rs. 254,745 being income tax due from him. Summons was issued on the defaulter who showed cause against the tax being recovered.

After inquiry, the appellant was fined the amount of the tax under section 85 ; in default he was ordered to undergo a term of six months' simple imprisonment. He has appealed and filed an application in revision.

It transpired in the course of the inquiry that the appellant had originally been assessed in respect of three consecutive years, and the dispute was whether the three additional assessments made and served on the

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appellant in respect of those three years were legal or not. In making those additional assessments the Assistant Commissioner in each case purported to act in terms of Section 64 (2) (b) Cap. 188, which enables an assessor, if he does not accept a return of income furnished by a person, to estimate the amount of the assessable income of such person and assess him accordingly. The Assistant Commissioner was wrong when he purported to act under Section 64 (2) (b), for he had accepted the return and made an assessment in terms of section 64 (2) (a). The correct procedure would have been for him to act under section 65 and make an additional assessment on the basis that the former assessment was less than the proper amount.

The learned Magistrate thought that section 65 did not apply and that the assessor could have acted under section 64 (2) in the circumstances of this case. With respect, I am unable to agree. But it still remains to be considered whether the certificate issued under section 80 (1) is invalidated by the mistake which the Assistant Commissioner made. In my opinion it is not. It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power. See *Mohamed Dastagiar Sahib v. Third Additional Income Tax Officer*<sup>1</sup>. Further, section 68 (1) of the Ordinance provides that "no notice, assessment, certificate, or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance . . . ." The error made by the Assistant Commissioner is covered by this provision.

There is another reason why it was not open to the defaulter in this case to raise the objection he did. The Act sets up a particular machinery for the making of an assessment and the questioning of an assessment when it has been made. An assessee who is dissatisfied with an assessment must seek his redress by way of appeal before the authorities set up by the Act. If the Assistant Commissioner makes a mistake of law in quoting the wrong section in support of the additional assessments, and the assessee feels that he can object to the assessments on that ground, his only course is to appeal. I would only add that although the Assistant Commissioner made an error while exercising a jurisdiction vested in him, his acts cannot be said to have been without jurisdiction.

The Magistrate exercising jurisdiction under section 80 is acting like a Court executing a judgment. The particular objection which the assessee put forward is not one which could properly be raised at that stage, and it is not one which the Magistrate had jurisdiction to hear and decide.

<sup>1</sup> (1961) 74 L. W. 440.

There are certain objections which an assessee can raise before the Magistrate, as has been pointed out in several decisions of this Court, but this is not one of them.

Mr. Weerasooria relied on the case of *Deputy Fiscal v. Tikiri Banda*<sup>1</sup> in which it was held that a warrant issued for the arrest of a judgment-debtor was void because it was not signed by the Judge. There is no resemblance between that case and this one. That judgment certainly does not lend support to the argument that the Magistrate has no jurisdiction in this case, or that the additional assessments are void because they purported to have been made under the wrong section of the Act.

I reject the appeal, for no appeal lay in this case, and I dismiss the application in revision.

*Appeal rejected. Application dismissed.*

