

1968

Present : Sirimane, J.

A. R. M. HAMID, Petitioner, and COMMISSIONER OF INLAND
REVENUE, Respondent

S. C. 603/68—Application for Revision in M. C. Colombo, 746/A

Income tax—Recovery of tax through a Magistrate's Court—Right of assessee to show that the tax has already been paid.

Though an assessee cannot dispute the correctness of an assessment at the stage of recovery through a Magistrate's Court, yet he can take up the position that in fact he has paid the amount claimed.

APPPLICATION to revise an order of the Magistrate's Court,
Colombo.

M. A. Mansoor, for the Assessee-Petitioner.

K. M. M. B. Kulatunga, Crown Counsel, for the Attorney-General.

December 16, 1968. SIRIMANE, J.—

A certificate had been filed by the Commissioner of Inland Revenue before the Chief Magistrate, Colombo, that the petitioner had defaulted in payment of a sum of Rs. 54,720 as income tax due for the year 1962-1963.

Thereafter an amended certificate had been filed reducing the sum claimed to Rs. 3,319.

The petitioner had taken up the position that the amount he had been summoned to pay as tax, had already been paid by him, and that he was therefore not liable to pay any sum whatsoever. The learned Magistrate

had apparently been under the misconception that the petitioner was disputing the quantum that was claimed. His position was that he had in fact *paid* the amount which he had been called upon to pay.

Though an assessee cannot dispute the correctness of an assessment at the stage of recovery through a Magistrate's Court, yet he can take up the position that in fact he has paid the amount claimed.

In *S. I. Mendis v. Commissioner of Income Tax*¹, Sansoni, J. pointed out that, "A defaulter is not precluded from showing that the Magistrate has no jurisdiction, because his last known place of business or residence does not fall within the local jurisdiction of the Magistrate : *he may also show that he has paid the tax due* : or that he is not a defaulter in that he is not the person assessed."

The learned Magistrate has misdirected himself when he refused to hear the petitioner on the question whether or not he had actually paid the tax which he had been summoned to pay.

The petitioner has been fined a sum of Rs. 3,319 and a default sentence of 3 months' simple imprisonment has been passed on him. The learned Crown Counsel who appeared for the Commissioner of Inland Revenue did not seek to support the order of the Magistrate. That order is quashed and the Magistrate is directed after notice to the parties to inquire whether the petitioner has in fact paid the amount which he has been summoned to pay.

Order quashed.
