

1965

Present : Tambiah, J., and Alles, J.

D. J. RANAWEERA, Appellant, *and* COMMISSIONER OF
INLAND REVENUE, Respondent

S. C. 68 (Inty.)/1963—D. C. Colombo, 255/A1

Income tax—Recovery of tax by seizure and sale of property—Procedure—Capacity of Assistant Commissioner to issue certificate to District Court—“Commissioner” — Ministerial function of Court—Income Tax Ordinance (Cap. 242), ss. 2, 6 (b), 11 (1) (a), 13 (2), 84 (3), 85 (1), 86, 87, 89.

Where any income tax is in default, an Assistant Commissioner may, if he is specially authorised by the Commissioner to act on his behalf, issue a certificate to a District Court, in terms of section 84 (3) of the Income Tax Ordinance, for the recovery of the tax.

The Supreme Court has no power to grant relief to the assessee at the stage of proceedings for the recovery of tax.

APPEAL from an order of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *P. Navaratnarajah* and *D. S. Wijewardene*, for the petitioner-appellant.

M. Kanagasunderam, Crown Counsel, for the respondent.

January 28, 1965. TAMBIAH, J.—

The only point raised in appeal is whether the Assistant Commissioner specially authorised by the Commissioner for some specific purpose to act on his behalf could issue a certificate under Section 84 (3) of the Income Tax Ordinance. Section 84 (3) enacts "where any tax is in default, and the Commissioner is of opinion that recovery by the means provided in subsection (2) is impracticable or inexpedient, he may issue a certificate to a District Court having jurisdiction in any district where the defaulter resides or in which any property movable or immovable owned by the defaulter is situate, containing particulars of such tax, and the name or names of the person or persons by whom the tax is payable. On receipt of such certificate the court is empowered to issue a writ of execution to the Fiscal authorising and requiring the Fiscal to seize and sell all and any of the property movable and immovable of the defaulter or such part of it as he may think necessary for the recovery of the tax". Commissioner is defined as follows. "Commissioner includes Commissioner of Income Tax appointed under this Ordinance, and the Deputy Commissioner or an Assistant Commissioner specially authorised by the Commissioner either generally or for some specific purpose to act on behalf of the Commissioner".

Mr. Jayewardene contends that under section 84 (3) it is only the Commissioner who could express his opinion and that it is not competent for an Assistant Commissioner specially authorised by the Commissioner to act on his behalf. There are several sections of the Income Tax Ordinance where the Commissioner is authorised to act in a particular way when he forms a certain opinion—vide Sections 81 (3), 85 (1), 86, 87 and 89. There are also other provisions where the Commissioner has to satisfy himself on certain facts before he could act—vide Sections 13 (2), 6 (b) and 11(1) (a). If Mr. Jayewardene's contention is correct then under all these sections it is only the Commissioner who could act. We do not see any reason why we should give a restricted meaning to the term 'Commissioner' under Section 84 (3) when the Legislature has provided a clear cut definition for the term 'Commissioner'.

Mr. Jayewardene also raised the question that the Assistant Commissioner was never authorised to sign a certificate under Chapter 13 of the Income Tax Ordinance. This point was not raised before the Court

of first instance. If it had been raised the Commissioner might have led evidence on this point. It is clear principle of law that a mixed question of fact and law cannot be raised in appeal—vide *Seetha v. Weerakoon* ¹.

In our view it is not necessary for the Commissioner to express an opinion that the recovery by means provided for in Section 79 (2) is impracticable or inexpedient (vide the dictum of Maartensz, J. in construing Section 79 (3), the present corresponding Section 85 of the Income Tax Ordinance, *Commissioner of Income Tax v. de Vos* ²).

Mr. Jayewardene also contended that this Court has power to give relief to the assessee who has been called upon to pay tax amounting to nearly 25 lakhs. Mr. Jayewardene submitted that the Crown purported to acquire a valuable land in Matara town and subsequently abandoned that project. He said that the Crown is making it difficult for the assessee to pay the tax from the proceeds which he expected from the intended sale of this property. No doubt this is a hardship which we hope the Commissioner will take into account in giving the assessee time to pay. We are of the view that we have no power to exercise our jurisdiction to stay the hands of the Commissioner. Under the provisions of the Estate Duty Ordinance I had occasion to hold that once a certificate is issued, the Court in issuing a writ does not act judicially but does a ministerial act, vide *Ranaweera v. Commissioner of Inland Revenue*. ³

For these reasons I dismiss the appeal. Under the special circumstances of this case there will be no costs of appeal.

ALLES, J.—I agree.

Appeal dismissed.
