

32, 1969

32

No **17 OF 1968**

Supreme Court of Ceylon,
Application No. 430 of 1964.

Application for a Mandate in the
nature of a Writ of Certiorari
and a Writ of Mandamus under
Section 42 of the Courts Ordinance.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

DONALD JASON RANAWEERA of No. 96, Mac Carthy Road, Colombo 7.
PETITIONER-APPELLANT.

And

1. R. Ramachandran,
2. N. S. Perera, and
3. S. N. B. Wijeyekoon,
Members of the Income Tax Board of Review, Colombo.
4. S. Sittampalam, Commissioner of Inland Revenue, Colombo *RESPONDENTS.*

UNIVERSITY OF LONDON
**INSTITUTE OF ADVANCED
 LEGAL STUDIES**
 - 9 MAR 1970
 111, BEDFORD SQUARE
 LONDON, W.C.1.

RECORD OF PROCEEDINGS

17 OF 1968

Supreme Court of Ceylon,
Application No. 430 of 1964.

Application for a Mandate in the
nature of a Writ of Certiorari
and a Writ of Mandamus under
Section 42 of the Courts Ordinance.

IN HER MAJESTY'S PRIVY COUNCIL ON AN APPEAL FROM THE SUPREME COURT OF CEYLON

BETWEEN

DONALD JASON RANAWEERA of No. 96, Mac Carthy Road, Colombo 7.
PETITIONER-APPELLANT.

And

1. R. Ramachandran,
2. N. S. Perera, and
3. S. N. B. Wijeyekoon,
Members of the Income Tax Board of Review, Colombo
4. S. Sittampalam, Commissioner of Inland Revenue, Colombo *RESPONDENTS*

~~~~~  

## RECORD OF PROCEEDINGS

  
~~~~~

i
INDEX - PART 1

Serial No	Description of Document	Date	Page
1	Application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance		
	(i) Petition of D. J. Ranaweera	23.11.64	1
	(ii) Affidavit of D. J. Ranaweera	22.11.64	5
2	Affidavit of L. Piyasena, Deputy Commissioner of Inland Revenue	13.1.65	9
3	Affidavit of C. B. E. Wickramasinghe, Senior Deputy Commissioner of Inland Revenue	13.1.65	11
4	Affidavit of S. Sittampalam, Commissioner of Inland Revenue	15.1.65	13
5	Decree of the Supreme Court dismissing Application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus	29.9.66	15
6	Application for Conditional Leave to Appeal to the Privy Council	26.10.66	16
7	Minute of Order granting Conditional Leave to Appeal to the Privy Council	26.1.67	17
8	Application for Final Leave to Appeal to the Privy Council	19.2.67	18
9	Minute of Order granting Final Leave to Appeal to the Privy Council	3.6.67	20

INDEX - PART II
Exhibits
(DOCUMENTS ANNEXED TO PETITIONER'S APPLICATION)

Exhibit Mark	Description of Document	Date	Page
A	Agreement reached under Section 69(2) of the Income Tax Ordinance (Same as R1)	27.3.61	21
B	Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1955/56	3.8.62	23
C	Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1956/57	3.8.62	23
D	Notice requesting to show cause why a penalty should not be imposed in respect of the year of Assessment 1957/58	3.8.62	24
E	Agreement to pay penalties in respect of the Years of Assessment 1950/51 to 1957/58 (Same as R 4)	3.7.63	26
F	Further Notice requesting to show cause why a penalty should not be imposed	10.2.64	28
G	Order under Section 80(1) imposing penalties in respect of the Years of Assessment 1955/56, 1956/57 and 1957/58	21.4.64	29
H	Decision of the Income Tax Board of Review (Same as R2)	6.10.64	33

(DOCUMENTS ANNEXED TO THE THREE AFFIDAVITS FILED ON BEHALF OF THE RESPONDENT)

R1	Agreement reached under Section 69(2) of the Income Tax Ordinance	27.3.61	21
R2	Decision of the Income Tax Board of Review	6.10.64	33
R3	Notice requesting to show cause why action should not be taken under Section 92(1) of the Income Tax Ordinance	3.8.62	25
R4	Agreement to pay penalties in respect of the Years of Assessment 1950/51 to 1957/58	3.7.63	26
R5	Notice to pay Rs. 450,000/- being penalties	5.7.63	26
R6	Letter giving final date for payment of Rs. 450,000/- being penalties	13.12.63	27
R7	Letter addressed to Commissioner of Inland Revenue by D Wijemanne & Company, Proctors & Notaries	3.3.64	28

No. 1
Application for a Mandate in the Nature of a Writ of Certiorari
and a Writ of Mandamus under Section 42 of the Courts Ordinance.

(i) Petition of D. J. Ranaweera.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance. (Chap.6)--

D. J. Ranaweera of 96, Mac Carthy Road, Colombo.

PETITIONER

10

-and-

Application
No. 430/64.

1. R. Ramachandram
2. N. S. Perera and
3. S. N. B. Wijekoon, Members of the Income Tax Board of Review, Colombo.
4. S. Sittampalam, Commissioner of Inland Revenue, Colombo ...

RESPONDENTS.

To:

20 THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER
JUSTICES OF THE HONOURABLE THE SUPREME COURT OF
THE ISLAND OF CEYLON.

On this 23rd day of November 1964.

The Petition of the Petitioner abovenamed appearing by Dharmadasa Wijemanne and Joseph Bertram Puvimanasinghe, practising in partnership in Colombo under the name style and firm of "DHARMADASA WIJEMANNE & COMPANY" and their assistants Lakshmi Mangala Fernando and Harilal Susantha Fernando, his Proctors states as follows:-

30 1. The Petitioner is a person assessed by the Commissioner of Inland Revenue to pay Income Tax on his income inter alia for the years of assessment 1950/51, 1951/52, 1952/53, 1953/54, 1954/55, 1955/56, 1956/57, and 1957/58.

2. The 1st, 2nd and 3rd respondents are Members of the Income Tax Board of Review set up and constituted under Section 74 of the Income Tax Ordinance Chapter 242. Fourth Respondent is the Commissioner of Inland Revenue and is made a party to this application for the purpose of giving the said respondent notice of this application but no relief is claimed against the 4th respondent.

40 3. The Department of Inland Revenue made certain assessments in respect of the Petitioner's income tax for the years of assessment 1950/51-1957/58 and in respect of profits tax for the years 1950-1956.

4. Thereafter the Petitioner appealed to the Commissioner of Inland Revenue against the said assessments and attached to the said appeal returns of his income and profits for the said years of assessment.

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus under
Section 42 of
the Courts
Ordinance

(i) Petition of
D. J. Ranaweera
23. 11. 64

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus
under
Section 42 of
the Courts
Ordinance

(i) Petition of
D.J. Ranaweera
23. 11. 64

—Continued

5. After consideration of the said returns the Department of Inland Revenue took up the position that there was an unaccountable appreciation in the Petitioner's capital position for the period 1st April 1949 to 31st March 1957.

6. Several interviews took place between the Petitioner's legal advisers and the officers of the Department of Inland Revenue and the dispute between the petitioner and the Department of Inland Revenue was adjusted by an agreement entered into by the petitioner under Section 69 (2) of the Income Tax Ordinance (Cap. 242). The Petitioner attaches herewith marked "A" a copy of the said agreement 10 dated 27th March 1961.

7. On or about 3rd day of August 1962 the Deputy Commissioner of Inland Revenue in the exercise of his powers under Section 80(1) of the Income Tax Ordinance (Cap. 242) called upon the Petitioner to show cause why a penalty should not be imposed on the Petitioner under Section 80 (1) of the Income Tax Ordinance (Cap. 242), for each of the years of assessment 1955/56, 1956/57 and 1957/58. The Petitioner attaches hereto copies of the said notices marked "B", "C" and "D."

8. The Petitioner and his legal advisers met the Deputy Commissioner of Inland Revenue in response to the said notice and the Deputy 20 Commissioner of Inland Revenue called upon the Petitioner to pay to the Commissioner of Inland Revenue a sum of Rs. 450,000/- in respect of the years 1950/51 to 1957/58. The Petitioner attaches herewith marked "E" copy of the said agreement.

9. Despite the said agreement the Deputy Commissioner of Inland Revenue issued a notice on the Petitioner dated 10th February 1964 calling upon the Petitioner to show cause why the Petitioner should not be called upon to pay a penalty in terms of Section 80(1) of the Income Tax Ordinance (Cap. 242). The Petitioner attaches hereto marked "F" a copy of the said notice. 30

10. Upon receipt of the said notice Messrs. Dharmadasa Wijemanne & Co., Prctors for the Petitioner wrote to the Commissioner of Inland Revenue as follows:-

"The Commissioner of Inland Revenue,
Department of Inland Revenue,
Colombo.

3. 3. 1964

Dear Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 AND 1957/58.

Reference your letter of the 10th February 1964 on the above subject we write on instructions from Mr D. J. Ranaweera to state 40 that he has cause to show.

Mr. M. Tiruchelvam Q. C., who has been retained to place this matter before you has unfortunately taken ill and is in Hospital. We therefore request that a month's time may be granted to enable Counsel to meet you.

Yours faithfully
Sgd. D. Wijemanne & Co."

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus
under
Section 42 of
the Courts
Ordinance

(1) Petition of
D.J. Ranaweera
23. 11. 64

11. Junior Counsel handed the said letter to the Commissioner of Inland Revenue who informed Junior Counsel that a month's time was given to the petitioner.

10 12. Thereupon the Deputy Commissioner of Inland Revenue without fixing a date for an inquiry into the matter and without intimating to the Petitioner the date of the inquiry made order condemning the Petitioner to pay penalties in terms of Section 80(1) of the Income Tax Ordinance (Cap.242) as follows:-

For year 1955/56	Rs. 180,000/-
For year 1956/57	Rs. 50,000/-
For year 1957/58	Rs. 120,000/-

The Petitioner attaches hereto marked "G" a copy of the said order.

20 13. The Petitioner states that the said order is erroneous in that it was not open to the Deputy Commissioner of Inland Revenue in law to impose penalties on the petitioner in respect of the years 1955/56, 1956/57 and 1957/58 in as much as the Deputy Commissioner of Inland Revenue had already called upon the Petitioner to pay a penalty of Rs. 450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58.

14. Thereupon the Petitioner appealed from the said order to the Income Tax Board of Review under the provisions of Section 80(2) of the Income Tax Ordinance (Cap. 242).

30 15. The Petitioner's appeal was entertained by the said Board consisting of the 1st 2nd and 3rd respondents abovenamed on the 14th July, 13th and 14th August and the 5th September 1964.

16. The 1st 2nd and 3rd respondents by their order dated 5th October 1964 confirmed the order of the said Deputy Commissioner and dismissed the Petitioner's appeal. The Petitioner attaches hereto a copy of the said order of the said respondents marked "H" which was only sent to the Petitioner on 2. 11. 1964.

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus
under
Section 42 of
the Courts
Ordinance

(i) Petition of
D.J. Ranaweera
23. 11. 64

—Continued

17. The Petitioner states that the provisions of Section 80(1) of the Income Tax Ordinance empowering the said Deputy Commissioner to impose a penalty on the Petitioner is null and void by reason of the fact that the said Deputy Commissioner is exercising judicial powers in so doing and the said Deputy Commissioner is not empowered in law to exercise judicial power in as much as the said Deputy Commissioner is the holder of a paid office and was not appointed by the Judicial Service Commission to exercise powers under section 80(1) of the Income Tax Ordinance.

18. The Petitioner states that the said order of the 1st 2nd 10 and 3rd respondents was erroneous in law and/or made in violation of the principles of natural justice for the reason that (a) the Petitioner was not permitted to prove that the Petitioner was not guilty of fraud as contemplated by Section 80 (1) of the Income Tax Ordinance by calling evidence at the hearing before the 1st 2nd and 3rd respondents, (b) the Petitioner was not permitted to raise a ground of appeal not contained in his notice of appeal to the said Respondents namely, that the order of the said Deputy Commissioner is erroneous in that it was not open to the said Deputy Commissioner in law to impose penalties on the petitioner in respect of the years 20 1955/56, 1956/57 and 1957/58 in as much as the said Deputy Commissioner had already called upon the petitioner to pay a penalty of Rs. 450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58 and (c) the grounds of appeal on questions of law that were entertained by the said respondents, were not upheld.

19. The Petitioner states that though the 1st to 3rd respondents are either the holders of a paid Judicial Office or are Public Officers, they were not appointed in accordance with the provisions of the Ceylon (Constitution) Order in Council 1946 and had no jurisdiction to hear and determine the Petitioner's appeal and there- 30 fore their aforesaid order dated 5th October 1964 and communicated to the Petitioner on 2nd November 1964 is null and void.

20. The Petitioner in these premises, is entitled to apply to Your Lordships' Court for a Mandate in the nature of a Writ of Certiorari ordering and directing the 1st 2nd and 3rd respondents to forward to Your Lordships' Court the record of the proceedings terminating in their said order dated the 5th October 1964, to quash the said order, and for a Mandate in the nature of a Writ of Mandamus directing and requiring the said respondents to hear and determine the Petitioner's appeal from the said order of the Deputy Commissioner 40 according to law.

WHEREFORE THE PETITIONER PRAYS THAT THEIR LORDSHIPS' BE PLEASED TO ISSUE:-

- (a) a Mandate in the nature of a Writ of Certiorari ordering and directing the 1st to 3rd respondents to forward to Your Lordships' Court the record of the proceedings in this matter and to quash the order dated 5th October 1964;
- (b) and alternatively for a Mandate in the nature of Writ of Mandamus ordering and directing the 1st to 3rd respondents to hear and determine the petitioner's appeal according to law;
- 10 (c) for costs of this application; and
- (d) for such other and further relief as to Your Lordships' Court shall seem meet.

No. 1
Application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance

(i) Petition of D.J. Ranaweera 23. 11. 64

—Continued

Settled by:-
Mr. S. Sittampalam
Mr. M. Tiruchelvam Q. C.,
Advocates.

Sgd. D. Wijemanne & Co.
Proctors for Petitioner.

No. 1

Application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance

(ii) Affidavit of D. J. Ranaweera

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance (Chap. 6.)

D. J. Ranaweera of 96, Mac Carthy Road, Colombo.
Petitioner.

-and-

- 1. R. Ramachandram
- 2. N. S. Perera and
- 3. S. N. B. Wijeyekoon, Members of the Income Tax Board of Review, Colombo.
- 4. S. Sittampalam, Commissioner of Inland Revenue, Colombo.... *Respondents.*

No. 1
Application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance

(ii) Affidavit of D. J. Ranaweera 22. 11. 64

20

30

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus
under
Section 42 of
the Courts
Ordinance

(ii) Affidavit
of D. J.
Ranaweera
22. 11. 64
—Continued

I, DONALD JASON RANAWEERA of No. 96, Mac Carthy Road, Colombo, do hereby solemnly sincerely and truly declare and affirm as follows:-

1. I am the Petitioner abovenamed.

2. The 1st, 2nd and 3rd respondents are Members of the Income Tax Board of Review set up and constituted under Section 74 of the Income Tax Ordinance Chapter 242. Fourth Respondent is the Commissioner of Inland Revenue and is made a party to this application for the purpose of giving the said respondent notice of this application but no relief is claimed against the 4th respondent.

3. The Department of Inland Revenue made certain assessments **10** in respect of my income tax for the years of assessment 1950/51 - 1957/58 and in respect of profits tax for the years 1950 - 1956.

4. Thereafter I appealed to the Commissioner of Inland Revenue against the said assessments and attached to the said appeal returns of my income and profits for the said years of assessment.

5. After consideration of the said returns the Department of Inland Revenue took up the position that there was an unaccountable appreciation in my capital position for the period 1st April 1949 to 31st March 1957.

6. Several interviews took place between my legal advisers and **20** the officers of the Department of Inland Revenue and the dispute between me and the Department of Inland Revenue was adjusted by an agreement entered into by me under Section 69(2) of the Income Tax Ordinance (Cap. 242). I attach herewith marked "A" a copy of the said agreement dated 27th March 1961.

7. On or about 3rd day of August 1962 the Deputy Commissioner of Inland Revenue in the exercise of his powers under Section 80 (1) of the Income Tax Ordinance (Cap. 242) called upon me to show cause why a penalty should not be imposed on me, under Section 80(1) of the Income Tax Ordinance (Cap. 242) for each of the years of assessment 1955/56, **30** 1956/57 and 1957/58. I attach hereto copies of the said notices marked "B", "C" and "D".

8. I and my legal advisers met the Deputy Commissioner of Inland Revenue in response to the said notice and the Deputy Commissioner of Inland Revenue called upon me to pay to the Commissioner of Inland Revenue a sum of Rs. 450,000/- in respect of the years 1950/51 to 1957/58. I attach herewith marked "E" copy of the said agreement.

9. Despite the said agreement the Deputy Commissioner of Inland Revenue issued a notice on me dated 10th February 1964 calling upon me to show cause why I should not be called upon to pay a penalty in terms of Section 80 (1) of the Income Tax Ordinance (Cap. 242). I attach hereto marked "F" a copy of the said notice.

10. Upon receipt of the said notice Messrs. Dharmadasa Wijemanne & Co. Proctors for me wrote to the Commissioner of Inland Revenue as follows:-

"The Commissioner of Inland Revenue
10 Department of Inland Revenue,
Colombo.

Dear Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 AND 1957/58

Reference your letter of the 10th February 1964 on the above subject we write on instructions from Mr. D. J. Ranaweera to state that he has cause to show.

Mr. M. Tiruchelvam Q. C., who has been retained to place this matter before you has unfortunately taken ill and is in Hospital. We therefore request that a month's time may be granted to enable
20 Counsel to meet you.

Yours faithfully,
Sgd. D. Wijemanne & Co."

11. Junior Counsel handed the said letter to the Commissioner of Inland Revenue who informed Junior Counsel that a month's time was given to me.

12. Thereupon the Deputy Commissioner of Inland Revenue without fixing a date for an inquiry into the matter and without intimating to me the date of the inquiry made order condemning me to pay penalties in terms of Section 80(1) of the Income Tax Ordinance (Cap. 242) as follows:-

30	For year 1955/56	Rs. 180,000/-
	For year 1956/57	Rs. 50,000/-
	For year 1957/58	Rs. 120,000/-

I attach hereto marked "G" a copy of the said order.

13. I state that the said order is erroneous in that it was not open to the Deputy Commissioner of Inland Revenue in law to impose penalties on me in respect of the years 1955/56, 1956/57 and 1957/58 in as much as the Deputy Commissioner of Inland Revenue had already called upon me to pay a penalty of Rs. 450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58.

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus
under
Section 42 of
the Courts
Ordinance

(ii) Affidavit
of D. J.
Ranaweera
22. 11. 64
—Continued

3. 3. 1964

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Mandamus
under
Section 42 of
the Courts
Ordinance

(ii) Affidavit
of D. J.
Rana weera
22. 11. 64

—Continued

14. Thereupon I appealed from the said order to the Income Tax Board of Review under the provisions of Section 80(2) of the Income Tax Ordinance (Cap. 242).

15. My appeal was entertained by the said Board consisting of the 1st 2nd and 3rd respondents abovenamed on the 14th July, 13th and 14th August and the 5th September 1964.

16. The 1st 2nd and 3rd respondents by their order dated 5th October 1964 confirmed the order of the said Deputy Commissioner and dismissed my appeal. I attach hereto a copy of the said order of the said respondents marked "H" which was only sent to me 10 on 2. 11. 1964.

17. I state that the provisions of Section 80(1) of the Income Tax Ordinance empowering the said Deputy Commissioner to impose a penalty on me is null and void by reason of the fact that the said Deputy Commissioner is exercising judicial powers in so doing and the said Deputy Commissioner is not empowered in law to exercise judicial power in as much as the said Deputy Commissioner is the holder of a paid office and was not appointed by the Judicial Service Commission to exercise powers under Section 80(1) of the Income Tax Ordinance. 20

18. I state that the said order of the 1st 2nd and 3rd respondents was erroneous in law and/or made in violation of the principles of natural justice for the reason that (a) I was not permitted to prove that I was not guilty of fraud as contemplated by Section 80(1) of the Income Tax Ordinance by calling evidence at the hearing before the 1st 2nd and 3rd respondents, (b) I was not permitted to raise a ground of appeal not contained in my notice of appeal to the said Respondents namely, that the order of the said Deputy Commissioner is erroneous in that it was not open to the said Deputy Commissioner in law to impose penalties on me in respect of the years 1955/56, 1956/57 30 and 1957/58 in as much as the said Deputy Commissioner had already called upon me to pay a penalty of Rs. 450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58 and (c) the grounds of appeal on questions of law that were entertained by the said respondents, were not upheld.

19. I state that though the 1st to 3rd respondents are either the holders of a paid Judicial Office or are Public Officers, they were not appointed in accordance with the provisions of the Ceylon

(Constitution) Order in Council 1946 and had no jurisdiction to hear and determine my appeal and therefore their aforesaid order dated 5th October 1964 and communicated to me on 2nd November 1964 is null and void.

No. 1
Application for
a Mandate in
the nature of a
Writ of
Certiorari and a
Writ of Manda-
mus under
Section 42 of
the Courts
Ordinance

(ii) Affidavit
of D. J.
Ranaweera
22. 11. 64

—Continued

20. I am in these premises, entitled to apply to Your Lordships' Court for a Mandate in the nature of a Writ of Certiorari ordering and directing the 1st 2nd and 3rd respondents to forward to Your Lordships' Court the record of the proceedings terminating in their said order dated the 5th October 1964, to quash the said order, and
10 for a Mandate in the nature of a Writ of Mandamus directing and requiring the said respondents to hear and determine my appeal from the said order of the Deputy Commissioner according to law.

Read over signed and affirmed)

to at Colombo on this 22nd day) Sgd. D. J. Ranaweera

of November 1964)

Before Me
Sgd. Illegibly.
A Justice of the Peace

20

No. 2

**Affidavit of L. Piyasena, Deputy Commissioner of
Inland Revenue**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 2
Affidavit of
L. Piyasena,
Deputy Com-
missioner of
Inland Revenue,
13.1.65

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance (Chap.6).

D. J. Ranaweera of 96, MacCarthy Road, Colombo.
..... *Petitioner.*

—and—

30 S. C. Application)
No. 430 of 1964)

1. R. Ramachandram.
2. N. S. Perera.
3. S. N. B. Wijeykoon, Members of the Income Tax Board of Review, Colombo.
4. S. Sittampalam, Commissioner of Inland Revenue, Colombo *Respondents.*

No. 2
Affidavit of
L. Piyasena,
Deputy Com-
missioner of
Inland Revenue,
13.1.65

—Continued

I, LENADUWALOKUGE PIYASENA, not being a Christian, solemnly, sincerely, and truly affirm and declare as follows:—

1. I am a Deputy Commissioner of Inland Revenue in the Department of Inland Revenue.

2. I have read the petition and affidavit of the Petitioner abovenamed.

3. The assessments, referred to in paragraph 1 of the Petition were made by Assessors of Income Tax in terms of Section 68(3) of the Income Tax Ordinance (Cap.242).

4. The notices of objections of the Petitioner abovenamed, to the 10 assessments referred to in paragraph 1 of the Petition, were considered by me, in the year 1957, in my capacity as Assistant Commissioner of Income Tax.

5. The objections to the said assessments were adjusted by an agreement dated 27th March, 1961. The Petitioner and his authorized representative K. S. Vaidyanathan signed the said Agreement in my presence. A certified copy of the said agreement is annexed hereto marked "R1".

6. The Petitioner's lawyers interviewed me on the 18th January, 1963, in regard to the letters "B", "C" and "D" annexed to the Petition, and 20 the letter "R3," referred to in the affidavit of C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue dated the 13th day of January, 1965 filed in this case. No agreement was arrived at with me with regard to a proposal that all the matters referred to in the said letters, be compounded, by the payment, by the petitioner, of an agreed sum of money, to the Department of Inland Revenue.

7. The order of C. B. E. Wickremasinghe, Deputy Commissioner of Inland Revenue, dated 21st April, 1964, and annexed to the petition Marked "G" was the subject of an appeal to the Board of Review, constituted under the provisions of the Income Tax Ordinance. 30 A certified copy of the Order of the Board of Review, on the said appeal, is annexed hereto marked "R2".

Signed and affirmed to by the deponent)
Lenaduwalokuge Piyasena at Colombo on)
this 13th day of January, 1965)

Sgd. L. Piyasena

BEFORE ME,
Sgd. H. Deheragoda
JUSTICE OF THE PEACE
for the Island of Ceylon.

No. 3
Affidavit of C. B. E. Wickramasinghe, Senior Deputy Commissioner of
Inland Revenue.

No. 3
 Affidavit of
 C.B.E.
 Wickrama-
 singhe,
 Senior
 Deputy Com-
 missioner of
 Inland Revenue,
 13.1.65

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a mandate in
 the nature of a Writ of Certiorari and a Writ of
 Mandamus under Section 42 of the Courts Ordinance
 (Chap 6)

D. J. Ranaweera of 96, MacCarthy Road, Colombo.
...*Petitioner.*

10

S. C. Application
 No. 430 of 1964.

-and-

1. R. Ramachandram.
2. N. S. Perera.
3. S. N. B. Wijeykoon, Members of the Income Tax
 Board of Review, Colombo.
4. S. Sittampalam, Commissioner of Inland Revenue
 Colombo *Respondents.*

I, CLAUDE BERTRAM EMMANUEL WICKRAMASINGHE, being a
 Roman Catholic, make oath and say as follows:-

20

1. I am the Senior Deputy Commissioner of Inland Revenue in
 the Department of Inland Revenue.

2. I have read the Petition and Affidavit of the Petitioner
 abovenamed.

3. On a consideration of all the matters contained in the files
 of the Petitioner abovenamed, in the Department of Inland Revenue,
 I issued on the Petitioner abovenamed, the notices marked "B", "C"
 and "D", which are annexed to the Petition.

4. At the same time, I issued on the Petitioner a notice under
 Section 92(1) of the Income Tax Ordinance (Cap.242), in respect of
 30 the years of assessment 1950/51; 1951/52; 1952/53; 1953/54; and 1954/55.
 A certified copy of the office copy of the said notice is annexed hereto
 marked "R3".

5. The Petitioner's lawyers interviewed me on the 30th March,
 1963. At the said interview the liability on the four notices "B",
 "C", "D" and "R3" which were considered together, was discussed. It was
 ultimately agreed by the Petitioner's lawyers that the Petitioner would
 pay a sum of Rs. 450,000/- as compounding penalty.

No. 3
Affidavit of
C.B.E.
Wickrama-
singhe,
Senior
Deputy Com-
missioner of
Inland Revenue,
13.1.65
—Continued

6. In accordance with this agreement, on the 3rd July, 1963 the Petitioner signed the agreement marked "E", in my presence A certified copy of the said agreement is annexed hereto marked "R4".

7. As contemplated by and in terms of the said agreement marked "R4", a notice was issued on the Petitioner on the 5th July, 1963, requesting the Petitioner to make payment on or before the 8th September, 1963. A certified copy of the office copy of said notice is annexed hereto, marked "R5".

8. As there was no response to the said notice marked "R5" 10 the 4th Respondent wrote the Petitioner on the 13th December, 1963, regarding the failure of the Petitioner to comply with the terms of the said agreement. The Petitioner was given time finally to make payment before the 27th December, 1963. A certified copy of the office copy of the said letter is annexed hereto marked "R6".

9. The Petitioner failed to make payment in accordance with the terms of the said letter "R6".

10. In view of the failure of the Petitioner to comply with the terms of the said agreement marked "R4", I wrote to the Petitioner on the 10th February, 1964 intimating to him that I proposed making 20 an order against him under Section 80(1) of the Income Tax Ordinance, and giving him an opportunity to show cause against the making of such order, on or before the 3rd March, 1964. A certified copy of the said letter is annexed to the Petition marked "F".

11. I am aware that Mr. S. Sittampalam, Advocate interviewed the 4th Respondent on the 3rd March, 1964. I am also aware that as a result of the said interview, a further month's time to show cause against an order being made, was allowed. The letter marked "R7" which is annexed to the affidavit of the 4th Respondent, was seen by me, on the 3rd March, 1964. 30

12. No cause was shown by the Petitioner even during the extended period allowed by the 4th Respondent.

13. During the extended period, the Petitioner would have been entitled, according to the normal procedure in my office, to see me or otherwise communicate with me in my office at any time during office hours and show cause against the making of an order under Section 80(1) of the Income Tax Ordinance.

14. I made the order, marked "G", annexed to the Petition on the 21st April 1964. Up to that time I received no communication whatsoever from the Petitioner or his lawyers.

15. With reference to the averment in paragraph 8 of the Petition to the effect that the Deputy Commissioner of inland Revenue called upon the Petitioner to pay a sum of Rs. 450,000/-, I state that at the interview referred to in paragraph 5 above, it was agreed by the Petitioner's lawyers that the Petitioner would pay a sum of Rs. 450,000/- as compounding penalty.

No. 3
Affidavit of
C.B.E.
Wickrama-
singhe,
Senior
Deputy Com-
missioner of
Inland Revenue,
13.1.65

--Continued

10 Signed and Sworn to by the deponent)
Claude Bertram Emmanuel Wickramasinghe) Sgd.
at Colombo on this 13th day of January) C. B. E. Wickramasinghe
1965... ..)

BEFORE ME,
Sgd. H. Deheragoda
JUSTICE OF THE PEACE
for the Island of Ceylon.

No. 4

Affidavit of S. Sittampalam, Commissioner of Inland Revenue

20 IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 4
Affidavit of S.
Sittampalam,
Commissioner
of Inland
Revenue-
15.1.65

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance (Chap.6).

D. J. Ranaweera of 96, MacCarthy Road, Colombo.

S.C. Application
No. 430 of 1964
.....
Vs

.....*Petitioner.*

- 1. R. Ramachandran.
- 2. N. S. Perera.
- 3. S. N. B. Wijeykoon, Members of the Income Tax Board of Review, Colombo.
- 4. S. Sittampalam, Commissioner of Inland Revenue, Colombo*Respondents.*

30

No. 4
Affidavit of S.
Sittampalam,
Commissioner
of Inland
Revenue-
15.1.65
—Continued

I, SANGARAPILLAI SITTAMPALAM, not being a Christian, solemnly, sincerely, and truly affirm and declare as follows:-

1. I am the Commissioner of Inland Revenue of the Department of Inland Revenue.

2. I have read the Petition and Affidavit of the Petitioner abovenamed.

3. I wrote the letter "R6", annexed to the affidavit of C. B. E. 10 Wickramasinghe, Deputy Commissioner of Inland Revenue, dated the 13th day of January, 1965 filed in this case.

4. Mr. S. Sittampalam, Advocate, interviewed me on the 3rd March, 1964. On that occasion he handed to me the letter marked "R7" annexed hereto, and made an application to me, for further time for Counsel for the Petitioner to appear and show cause against the action proposed in the letter marked "F", annexed to the petition.

5. On the representation made to me by Mr. S. Sittampalam, Advocate 20 and in accordance with the request made in the said letter "R7", I allowed his application for a further month's time, to show cause. I made a contemporaneous note of the said interview on the said letter. The said letter was thereafter sent to C. B. E. Wickramasinghe, Deputy Commissioner of Inland Revenue.

6. Since that date I had no communication whatsoever from or on behalf of the Petitioner in respect of the action proposed in the said letter marked "F", which is annexed to the Petition.

Signed and affirmed to by the deponent)
Sangarapillai Sittampalam at Colombo)
on this 15th day of January, 1965)

Sgd/S. Sittampalam.

30

Before Me,
Sgd/C. H. M. P. Fernando
JUSTICE OF THE PEACE
for the Island of Ceylon

No.6
Application for
Conditional
Leave to Appeal
to the Privy
Council-
26.10.66

No. 6
Application for Conditional Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to Her Majesty the Queen-in-Council under the Appeals (Privy Council) Ordinance.

D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7
..... *Petitioner*

S. C. No. 430/64
Application
No. 443/66

vs

- | | |
|---|--------------------|
| 1. R. Ramachandram | 10 |
| 2. N. S. Perera | |
| 3. S. N. B. Wijeyakoon, Members of the Income Tax Board of Review, Colombo. | |
| 4. S. Sittampalam, Commissioner of Inland Revenue, Colombo. | <i>Respondents</i> |

And:-

D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7.
..... *Petitioner-Appellant.*

vs.

- | | |
|---|---------------------|
| 1. R. Ramachandram. | 20 |
| 2. N. S. Perera. | |
| 3. S. N. B. Wijeyakoon, Members of the Income Tax Board of Review, Colombo. | |
| 4. S. Sittampalam, Commissioner of Inland Revenue, Colombo. | <i>Respondents.</i> |

On this 26th day of October 1966.

The Petition of the Petitioner appellants abovenamed appearing by Dharmadasa Wijemanne and Joseph Bertram Puvimanasinghe, practising in partnership in Colombo under the name style and firm of "WIJEMANNE & CO." and their assistant Charles Witharana, his Proctors states as follows:-

1. That feeling aggrieved by the judgment order and decree of this The Honourable the Supreme Court of the Island of Ceylon pronounced on the 29th day of September 1966 the Petitioner Appellant is desirous of appealing therefrom to her majesty the queen in council.

2. The said judgment is a final judgment and the matter in dispute in the appeal amounts to or is of the value of Rs. 5,000/- or upwards and/or the appeal involves directly or indirectly a claim or question to or respecting property or a civil right amounting to or of the value of Rs. 5,000/- or upwards and/or the question involved in the appeal is one which by reason of its great public importance or otherwise ought to be submitted to her majesty in council or decision.

3. On the 10th day of October 1966 the Petitioner Appellant has in terms of Rule 2 of the Schedule to The Appeals (Privy Council) Ordinance given due notice of this application to the Respondent in the following terms:-

No.6
Application for
Conditional
Leave to Appeal
to the Privy
Council-
26.10.66

—Continued

10 “Take notice that I, Donald Jason Ranaweera of No. 96 Mc Carthy Road, Colombo, the Petitioner in the above styled application will in accordance with the Appeals (Privy Council) Ordinance apply to the Honourable the Supreme Court of the Island of Ceylon for leave to appeal to Her Majesty the Queen-in Council against the judgment and order of the Supreme Court pronounced on the 29th day of September 1966. The application for Conditional Leave will be filed in the Supreme Court within 30 days from the said judgment and order.

Sgd. D. J. Ranaweera
Petitioner.

Sgd. Wijemanne & Co.
Proctors for Petitioner

Colombo, this 10th day of October 1966.”

4. The said notice was sent to the Respondents by (a) ordinary post and (b) Registered post and (c) Telegram and (d) delivered by hand.

20 WHEREFORE THE PETITIONER APPELLANT PRAYS that Your Lordships' Court be pleased to grant:

- (a) conditional leave to appeal against the said Judgment, order and decree of this Court dated the 29th day of September 1966 to Her Majesty the Queen in Council;
- (b) costs and such other and further relief as to this Court shall seem meet.

Sgd. Wijemanne & Co.
*Proctors for Petitioner
Appellant.*

No. 7

**Minute of Order granting Conditional Leave to appeal to the
Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

No. 7
Minute of Order
granting Con-
ditional Leave
to Appeal to the
Privy Council-
26.1.67

No. 7
Minute of Order
granting Con-
ditional Leave
to Appeal to the
Privy Council-
26.1.67

—Continued

S. C. Application
N . 430/64.
(Writ)

D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7.
Petitioner-Appellant

vs

S. C. Application
No. 443/66.
(Conditional Leave)

1. R. Ramachandram
2. N. S. Perera
3. S. N. B. Wijeyakoon, Members of the Income Tax
Board of Review, Colombo.
4. S. Sittampalam, Commissioner of Inland Revenue,
Colombo. *Respondents.*

The application of Donald Jason Ranaweera of No. 96, Mc Carthy 10
Road, Colombo 7, for Conditional Leave to Appeal to Her Majesty the
Queen in Council from the Judgment and Decree of the Supreme Court
of the Island of Ceylon pronounced on the 29th day of September,
1966 in S. C. Application No. 430/64, having been listed for hearing and
determination before the Honourable Vaitilingam Manicavasagar, Puisne
Justice and the Honourable George Terronco Samarawickrame, Q. C. Puisne
Justice, in the presence of H. W. Jayewardena Esquire., Q.C. with S. Sith-
ambalam Esquire, Advocates for the Petitioner-Appellant and P. Nagu-
leswaran Esquire, Crown Counsel, for the Respondent, order has been 20
made by Their Lordships on the Twenty-Sixth day of January, 1967
allowing the aforementioned application for Conditional Leave to Appeal
to Her Majesty the Queen in Council.

Sgd. N. Navaratnam
Registrar of the Supreme Court.

No. 8
Application for
Final Leave to
Appeal to the
Privy Council-
19.2.67

No. 8
Application for Final Leave to Appeal to the
Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave
to Appeal to Her Majesty the Queen in Council 3)
under the Appeals (Privy Council) Ordinance
(Cap. 100).

S.C. Application
No. 430/64 (Writ)

D. J. Ranaweera of 96, Mc Carthy Road, Colombo 7.
Petitioner - Appellant.

S.C. Application
No. 443/66.
(Conditional Leave)

vs.

1. R. Ramachandran.
2. N. S. Perera.
3. S. N. B. Wijeyakoon, Members of the Income Tax Board of Review, Colombo.
4. S. Sittampalam, Commissioner of Inland Revenue, Colombo Respondents.

No. 8
Application for
Final Leave to
Appeal to the
Privy Council-
19.2.67

—Continued

On this 19th Day of February 1967.

The Petition of the Petitioner Appellant abovenamed appearing by Dharmadasa Wijemanne and Joseph Bertram Puvimanasinghe, 10 practising in partnership in Colombo under the name style and firm of "WIJEMANNE & Co." and their assistant Charles Witharana, his Proctors states as follows:-

1. The Petitioner-Appellant, on the 26th day of January 1967, obtained conditional leave to appeal to the Privy Council (in S. C. Application No. 443/66) against the Judgment and Decree pronounced by Your Lordships' Court on the 29th day of September 1966 in S.C. Application No. 430 of 1964.

2. The Petitioner-Appellant has, in compliance with the conditions on which such leave was granted, deposited with the Registrar of the Supreme Court a sum of Rupees Three Thousand (Rs. 3,000/-) being security for 20 costs of appeal and hypothecated the said sum of Rupees Three Thousand (Rs. 3,000/-) by bond on the 13th day of February, 1967.

3. The Petitioner - Appellant has also deposited with the said Registrar on the 13th day of February 1967 a sum of Rs. 300/- in respect of the amounts and fees mentioned in section 4(2) (b) and (c) of the Appeals (Privy Council) Ordinance

4. The Petitioner-Appellant has, at the same time at which he gave security for the prosecution of his appeal, lodged with the said Registrar stamps to the value of Rs. 24/- for the duty payable in respect of the Registrar's certificate in appeal as required by section 30 15 of the Appellate Procedure (Privy Council) Order, 1921.

5. The Petitioner-Appellant has given notice of this application to the Respondents abovenamed by sending to each one of them on this day by registered post the following notice together with copies of this petition and the affidavit filed herewith:

"TAKE NOTICE that having complied with the conditions on which conditional leave to appeal to the Privy Council was granted to me in S. C. Application No. 443/66 against the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 29th day of September 1966, I have made an application to 40 the said Supreme Court on this day for final leave to appeal. Copies of the Petition and affidavit are hereto annexed for your information.

Sgd. D. J. Ranaweera
Petitioner-Appellant.

No. 8
Application for
Final Leave to
Appeal to the
Privy Council-
19.2.67
—Continued

Dated at Colombo this 19th day of February 1967.”

WHEREFORE THE PETITIONER-APPELLANT PRAYS THAT:

- (a) He be granted final leave to appeal to the Privy Council against the said Judgment and Decree of the Supreme Court of the Island of Ceylon dated the 29th day of September 1966,
- (b) for Costs, and
- (c) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. Wijemanne & Co.
Proctors for Petitioner-Appellant. 10

No. 9

Minute of Order Granting Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 9
Minute of Order
granting Final
Leave to Appeal
to the
Privy Council
3. 6. 67

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set in the Schedule to the Appeals (Privy Council) Ordinance.

S. C. Application No. 430/64. (Writ)	D. J. Ranaweera of 96, McCarthy Road, Colombo 7 <i>Petitioner-Appellant.</i> 20
	vs.
S. C. Application No. 443/66. (Conditional Leave)	1. R. Ramachandram
S. C. Application No. 63/67 (Final Leave)	2. N. S. Perera 3. S. N. B. Wijeyakoon, Members of the Income Tax Board of Review, Colombo. 4. S. Sittampalam Commissioner of Inland Revenue, Colombo <i>Respondents.</i>

The application of Donald Jason Ranaweera of No. 96, McCarthy Road Colombo 7, for Final Leave to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 29th day of September, 1966 in S. C. Application No. 430/64, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Chief Justice and the Honourable Asoka Windra Hemantha Abeyesundere, Q. C., Puisne Justice in the presence of H. W. Jayawardene Esquire, Q. C., with S. Sithambalam Esquire, Advocates for the Petitioner-Appellant and P. Naguleswaran Esquire, Crown Counsel, for the 4th Respondent, order has been made by Their Lordships on the Third day of June, 1967 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

Sgd. N. NAVARATNAM 40
Registrar of the Supreme Court.

EXHIBITS

PART II

R 1
Agreement reached under Section 69(2) of the
Income Tax Ordinance.

R1
 Agreement
 reached under
 Section 69(2)
 of the
 Income Tax
 Ordinance
 27.3.61

File No. 52/9241

In regard to the appeals lodged by me against the income tax assessments made on me for the years 1950/51, 1951/52, 1952/53, 1953/54, 1954/55, 1955/56, 1956/57 and 1957/58 and the Profits Tax assessments for the years 1950, 1951, 1952, 1953, 1954, 1955 and 1956, I hereby in terms of Section 69(2) of the Income Tax Ordinance
 10 agree that I am liable to be assessed at the following amounts.

INCOME TAX

1.	Year of assessment	1950/51 -	Assessable income	Rs. 594,075/-
2.	"	"	1951/52 -	Rs. 633,568/-
3.	"	"	1952/53 -	Rs. 107,610/-
4.	"	"	1953/54 -	Rs. 33,972/-
5.	"	"	1954/55 -	Rs. 617,358/-
6.	"	"	1955/56 -	Rs. 1,136,924/-
7.	"	"	1956/57 -	Rs. 270,629/-
8.	"	"	1957/58 -	Rs. 447,763/-

20 PROFITS TAX

1.	1950	Chargeable Surplus	Rs. 469,887/-
2.	1951	Chargeable Surplus	Rs. 280,763/-
3.	1952	Chargeable Surplus	Rs. 116,555/-
4.	1953	Chargeable Surplus	Rs. 65,873/-
5.	1954	Chargeable Surplus	Rs. 571,347/-
6.	1955	Chargeable Surplus	Rs. 424,445/-
7.	1956	Chargeable Surplus	Rs. 137,293/-

The above amounts of assessable income and chargeable surplus have been computed at the end of an examination of the improvement
 30 in my wealth position between the period 1st April, 1949, and 31st March, 1957. As a result of this examination the discrepancy I could not explain between my disbursements and receipts was estimated at Rs. 4,400,000 and it has been agreed that of this Rs. 2,400,000 should be included in my assessments as undisclosed income. The assessable incomes mentioned in the preceding paragraph have been computed on this basis.

I have further agreed that out of the 4,400,000 rupees referred to above 2 million was income of my father, the late Mr. D. A. Ranaweera. As a part of the settlement of my appeals, I further
 40 agree that I will pay income tax and profits tax on 600,000 rupees

R1
Agreement
reached under
Section 69(2)
of the
Income Tax
Ordinance
27.3.61
—Continued

out of the 2 million treated as my father's income. I agree that this 600,000 rupees is assessable for the years of assessment 1950/51, 1951/52 and 1952/53 at the rate of 200,000 for each year. On this basis I agree to pay income tax on additional assessments to be made on me as executor of the estate of the late Mr. D A. Ranaweera on the following basis.

1950/51	additional income	Rs 200,000
1951/52	additional income	Rs. 200,000
1952/53	additional income	Rs. 200,000

I also agree to pay the following amounts as profits tax on the 10 sum of Rs. 600,000/- assessed as my father's income on the following basis.

1950	Rs. 40,000/-
1951	Rs. 50,000/-
1952	Rs. 44,026/-

I have been informed that the settlement of my appeals on the above basis is without prejudice to the powers the Commissioner has to take action against me under the penal provisions of the Income Tax Ordinance in respect of any offences committed by me in connection with my returns for the years 1950/51 to 1957/58 and 20 the information I have furnished in connection with the inquiries made into the appeals for these years.

Witness
K. S. Vaidyanathan
27. 3. 1961

Sgd. D. J. Ranaweera
27/3/61

B**(Petitioner's Document)****Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1955/56.**

When replying please quote File No. 52/9241(SEC). Department of Inland Revenue, Senate Square New Secretariat, P. O. Box 515, Colombo 1.

Form No. 2PB

YEAR OF ASSESSMENT 1955/56

In the above Assessment issued on 10.5.61 under Charge No 10 HH249 which has now become final and conclusive in terms of Section 79 your assessable income was assessed at Rs. 1,030,838.

As the income assessed exceeds the income specified in your return, I propose to impose a penalty on you under Section 80 (1) of the Income Tax Ordinance for making an incorrect return.

I am now requesting you to state in writing on or before 17.8.62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return and that, accordingly, no penalty should be imposed.

(Sgd.) C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue.
Date 3. 8. 62.

20

To:- D. J. Ranaweera Esq.,
96, Mc Carthy Road,
Colombo 7.

St. 690 (12/60)

C**(Petitioner's Document)****Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1956/57**

When replying please quote File No. 52/9241 (SEC.) Department of Inland Revenue, Senate Square, New Secretariat, P. O. Box 515, Colombo 1.

Form No. 2PB

YEAR OF ASSESSMENT 1956/57

In the above Assessment issued on 10.5.61 under Charge No. HH 1378 which has now become final and conclusive in terms of Section 79, your assessable income was assessed at Rs. 236,306.

B
(Petitioner's Document)
Notice requesting to show cause why a penalty should not be imposed in respect of the year of Assessment 1955/56
3. 8. 62

C
(Petitioner's Document)
Notice requesting to show cause why a penalty should not be imposed in respect of the Year of Assessment 1956/57
3. 8. 62.

C
(Petitioner's
Document)
Notice request-
ing to show
cause why a
penalty should
not be imposed
in respect of
the Year of
Assessment
1956/57
3 8. 62.

—Continued

As the income assessed exceeds the income specified in your return, I propose to impose a penalty on you under Section 80(1) of the Income Tax Ordinance for making an incorrect return.

I am now requesting you to state in writing on or before 17.8.62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return, and that, accordingly, no penalty should be imposed.

Sgd. C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue.
Date 3. 8. 62.

10

To:

D. J. Ranaweera Esqr.,
No. 96, McCarthy Road,
Colombo 7.

St. 690(12/60)

D
(Petitioner's
Document)
Notice request-
ing to show
cause why a
penalty should
not be imposed
in respect of
the year of
Assessment
1957/58
3.8.62.

D
(Petitioner's Document)

Notice requesting to show cause why a penalty should not be imposed in respect of the year of Assessment 1957/58.

When replying please quote
File No. 52/9241

Form No. 2PB
Department of Inland Revenue, Senate 20
Square, New Secretariat, P. O. Box 515,
Colombo 1.

YEAR OF ASSESSMENT 1957/58

In the above assessment issued on 10. 5. 61 under Charge No. HL. 1249 which has now become final and conclusive in terms of Section 79, your assessable income was assessed at Rs. 447,793.

As the income assessed exceeds the income specified in your return, I propose to impose a penalty on you under Section 80(1) of the Income Tax Ordinance for making an incorrect return.

I am now requesting you to state in writing on or before 17. 8. 62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return, and that, accordingly, no penalty should be imposed.

To:-

D. J. Ranaweera Esqr.,
No. 96, McCarthy Road,
Colombo 7.

Sgd. C. B. E. Wickremasinghe
Deputy Commissioner of Inland Revenue
Date 3. 8. 62.

St. 690 (12/60)

R 3

**Notice requesting to show cause why action should not be taken
under Section 92 (1) of the Income Tax Ordinance**

BY REGISTERED POST

52/9241/LP

August 3rd, 62.

R3
Notice request-
to show cause
why action
should not be
taken under
Section 92(1)
of the Income
Tax Ordinance
3.8.62.

10 Sir,

It has been reported to me that the income tax returns made by you for the years of assessment 1950/51, 1951/52, 1952/53, 1953/54 and 1954/1955 have been found to be false. As a result of the investigations carried out into the returns furnished by you, you have agreed that the following sums should be treated as undisclosed income and added to the income shown in your returns for purposes of arriving at your assessable income:-

Year of Assessment	1950/51	Rs. 150,000
- do -	1951/52	250,000
- do -	1952/53	250,000
- do -	1953/54	350,000
- do -	1954/55	350,000

20 In the circumstances, it is necessary for me to consider what steps should be taken to impose on you the penalties prescribed under section 92 (1) of the Income Tax Ordinance.

Please show cause in writing on or before 17th August, 1962, why action under section 92 (1) of the Income Tax Ordinance should not be taken against you.

I am Sir,
Your obedient servant,
Intd. C. B. E. Wickramasinghe
Deputy Commissioner.

30 D. J. Ranaweera Esqr.
96, Mac Carthy Road,
Colombo 7.

Certified true copy of office copy.

Sgd.
Asst. Commissioner.
10. 11. 64

R 4
Agreement to
pay penalties
in respect of
the Years of
Assessment
1950/51 to
1957/58
3.7.63.

R 4

**Agreement to pay penalties in respect of the Years of
Assessment 1950/51 to 1957/58**

No. 52/9241.
Colombo.

Having incurred penalties under the provisions of the Income Tax Ordinance, in consideration of proceedings not being taken against me in respect of the said penalties, I hereby agree to pay to the Commissioner of Inland Revenue, Colombo, in respect of the penalties incurred for the years 1950/51 to 1957/58 inclusive, the sum of Rs. 450,000/- (Rupees 10 Four hundred and fifty thousand) within 2 months of the issue of a notice to pay by the Commissioner of Inland Revenue.

Dated:

Signed: D. J. Ranaweera
3/7/63

Witness: C. B. E. Wickramasinghe

Certified True copy.

Sgd.

Asst. Commissioner.
12th November 1964

R 5

20

R 5
Notice to Pay
Rs. 450,000/-
being penalties
5.7.63.

Notice to Pay Rs. 450,000/- being penalties

File No. 52/9241.

Form No. 10Z

CHARGE No. 6/PB/CP.135.

Date 5th July, 1963.

To: D. J. Ranaweera Esqr.,
of : 96, Mc Carthy Road, Colombo-7.

With reference to the letter signed by you agreeing to pay the sum of Rs. 450,000/-, being penalties, I write to inform you that the above amount falls due for payment on or before 8.9.63.

Sgd. T. Chelvaratnam

30

Department of Inland Revenue,
(P. O. Box 515), Senate Square,
Colombo.

for Commissioner of Inland Revenue.

NOTE

This form **MUST** be returned with your remittance to:
The Commissioner of Inland Revenue, Administrative Branch (C),
(P. O. Box 515), Colombo.

R5
Notice to Pay
Rs. 450,000/-
being penalties
5.7.63.
—Continued

Certified True Copy of Office Copy
Sgd. ...
Asst. Commissioner.
23.10.64
St-256(6/60)

R 6

10 Letter giving Final date for payment of
Rs. 450,000/- being penalties

R 6
Letter giving
final date for
payment of
Rs. 450,000/-
being penalties
13.12.63

REGISTERED POST

D. 52/9241 (KW)

13th December, 1963,

Sir,

I refer to my letter dated 5th July, 1963, requiring you to pay the sum of Rs. 450,000/- on or before 8th September, 1963. This payment was to be made pursuant to an agreement signed by you on 3rd July, 1963, whereby you had agreed to pay this sum in consideration of proceedings not being taken against you in respect of penalties you had incurred under the provisions of the Income Tax Ordinance.

Notwithstanding this agreement and the aforesaid notice, you have not paid the amount agreed to be paid. I am now giving you a final date for payment by the 27th December, 1963. If you fail to pay the abovementioned sum of Rs. 450,000/- by that date, I shall assume that you do not propose to comply with the terms of the agreement dated 3.7.63.

I am, Sir,
Your obedient servant,
Sgd. S. Sittampalam
Commissioner of Inland Revenue.
Certified true copy of office copy.

30

D. J. Ranaweera Esq.,
96, Mc Carthy Road,
Colombo 7.

Sgd.
Asst. Commissioner.
23.10.64

F
(Petitioner's
Documents)
Further Notice
requesting to
show cause
why a penalty
should not be
imposed
10.2.64.

F
(Petitioner's Document)

**Further Notice requesting to show cause why a penalty should not be imposed
Registered Post**

My No. 52/9241.

February 10, 1964.

Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 and 1957/58.

I refer to my notices to you dated 3rd August 1962, issued for the above years in respect of action which I proposed to take under Section 80(1) of the Income Tax Ordinance. 10

At the interview you had with me on the 3rd July, 1963, in response to these notices, you agreed to pay Rs. 450,000/- in consideration of my not taking further action against you in connection with these and the years of assessment 1950/51 to 1954/55. But you have so far failed to honour this promise despite the fact that 7 months have elapsed since the issue of notice dated 5.7.63.

I now propose therefore, to make an order that you should pay a penalty as contemplated by Section 80(1) of the Income Tax Ordinance in respect of each of the above years and I am hereby giving you an opportunity to show cause, if any, on or before the 3rd March, 20 1964, against such order being made.

I am, Sir,

Your obedient Servant,

Deputy Commissioner of Inland Revenue.

To: D. J. Ranaweera Esqr.,
96 Mc Carthy Road,
Colombo 7.

R7
Letter address-
ed to Commis-
sioner of
Inland Revenue
by
D Wijemanne
& Company,
Proctors &
Notaries
3.3.64.

R7

30

**Letter addressed to Commissioner of Inland Revenue
by D. Wijemanne & Company, Proctors & Notaries**

DHARMADASA WIJEMANNE & CO.,
Proctors & Notaries
Tele: 6126, 79957

Dharmadasa Wijemanne, J. P.
J. B. Puvimanasinghe
Upali W. Jayasooriya
Miss L. M. Fernando
H. S. Fernando

No.110/1, Front Street,
Colombo 11, 3.3.1964
(Ceylon)

40

Ref. No. JBP
Your Ref: D52/9241

The Commissioner of Inland Revenue,
Department of Inland Revenue,
Colombo.

Dear Sir,

YEARS OF ASSESSMENT 1955/56, 1956/57 and 1957/58

Reference your letter of the 10th February 1964 on the above subject we write on instructions from Mr. D. J. Ranaweera to state that he has cause to show.

10 Mr. M. Tiruchelvam Q. C., who has been retained to place this matter before you has unfortunately taken ill and is in Hospital. We therefore request that a month's time may be granted to enable Counsel to meet you.

Yours faithfully

Sgd. D. Wijemanne & Co.

Mr. S. Sittampalam, Advocate
Junior to M. Tiruchelvam Q. C.

sees me to ask for time.

Time allowed.

Intd. S. S.

3/3/64.

20

Certified true copy.

Sgd. .

Asst. Commissioner

12th November 1964

G

(Petitioner's Document)

Order under Section 80(1) imposing Penalties in respect of the
Years of Assessment 1955/56, 1956/57 and 1957/58

30

File No. D52/9241.

YEARS OF ASSESSMET 1955/56, 1956/57 and 1957/58.

ORDER UNDER SECTION 80(1) IMPOSING PENALTIES

On the 3rd August 1962, I noticed Mr. D. J. Ranaweera the assessee to show cause why action should not be taken against him to impose penalties prescribed under Section 80(1) in respect of the years of assessment 1955/56, 1956/57 and 1957/58 and under Section 92(1) in respect of the years of assessment 1950/51, 1951/52, 1952/53, 1953/54 and 1954/55.

R7
Letter address-
ed to Commis-
sioner of
Inland Revenue
by
D Wijemanne
& Company,
Proctors &
Notaries
3.3.64.

—Continued

G
(Petitioner's
Document)
Order under
Section 80(1)
imposing
penalties in
respect of the
Years of
Assessment
1955/56, 1956/57
and 1957/58
21.4.64.

G
(Petitioner's
Document)
Order under
Section 80(1)
imposing
penalties in
respect of the
Years of
Assessment
1955/56, 1956/57
and 1957/58
21.4.64.

—Continued

On the 30th March 1963, in response to these notices Messrs E. B. Wickremanayake, Q. C. and P. Navaratnarajah, Advocates appeared before me. At this Meeting, Counsel for the assessee discussed a compromise of both these matters and ultimately agreed to compound the offences coming under Section 80(1) and under Section 92(1) at Rs. 450,000/-. They agreed to bring Mr. Ranaweera before me and to get him to sign an Agreement agreeing to pay the sum of Rs. 450,000/- as a compounding penalty.

Subsequently, on the 3rd July 1963 the assessee called with his Counsel, Mr. Navaratnarajah and signed an Agreement agreeing to pay the sum of Rs. 450,000/- in respect of the years 1950/51 to 1957/58 within 2 months of the issue of a notice to pay, by the Commissioner of Inland Revenue. The notice to pay this sum was issued to the assessee on 5th July 1963. It required him to pay the amount on or before the 8th September 1963. The assessee failed to honour this Agreement to pay the said sum of Rs. 450,000/- on or before the 8th September 1963. It still remains unpaid. 10

In view of the failure of the assessee to honour his promise to compound the offences on the payment of Rs. 450,000/-, I decided to take action in respect of the years 1955/56, 1956/57 and 1957/58 under Section 80(1) and wrote to him on the 10th February 1964, informing him that I proposed to make an order that he should pay a penalty under Section 80(1) and further informed him that I was giving him an opportunity to show cause, if any, on or before 3rd March 1964, against such order being made. On the 3rd March 1964 Messrs. D. Wijemanne & Co., Proctors, on behalf of the assessee stated that assessee had cause to show. They requested that as Counsel who was to appear for the assessee had taken ill and was in hospital, a month's time be granted to enable him to meet me. This application was allowed. 20

The extension granted has now expired and no further representations have been made. I am, therefore, proceeding to impose penalties under Section 80(1) in respect of the years of assessment 1955/56, 1956/57 and 1957/58. As Section 80(1) does not apply to the years 1950/51 to 1954/55 this order is confined to the years of assessment 1955/56, 1956/57 and 1957/58. 30

Mr. D. J. Ranaweera is a Landed Proprietor. He owned considerable extents of property and had a very large income. He, however, failed to make returns of income for the above years of assessment. Thereupon, the Assessor issued assessments in terms of Section 68(3) of the Income Tax Ordinance estimating the assessee's income as follows:- 40

Year of assessment 1955/56	Rs. 1,250,000/-
Year of assessment 1956/57	500,000/-
Year of assessment 1957/58	500,000/-

The assessee appealed against these assessments and furnished returns showing his income or loss to be as follows:-

Year of assessment 1955/56 - Income	Rs. 421,678/-
Year of assessment 1956/57 - Loss	83,674/-
Year of assessment 1957/58 - Income	13,819/-

G
(Petitioner's Document)
Order under Section 80(1) imposing penalties in respect of the Years of Assessment 1955/56, 1956/57 and 1957/58
21.4.64.

—Continued

The Assessor, on examining the returns, found that the cost of production on estates owned by assessee was very excessive compared to the cost of production on similar estates. He also noticed a large discrepancy between the income returned and investments made. At the end of a detailed investigation, agreement was reached with the assessee, under Section 73(2) of the Income Tax Ordinance and the assessee agreed to his assessable income being assessed as follows:-

1955/56:	Assessable income	Rs. 1,136,924/-
	Tax	827,357/-
1956/57:	Assessable income	Rs. 270,629/-
	Tax	150,566/-
1957/58:	Assessable income	Rs. 447,793/-
	Tax	335,924/-

When on the 3rd August 1962, the assessee was called upon by me to state in writing the grounds on which he relied to prove that there was no fraud or wilful neglect involved in the disclosure of his income, he replied that his position was that the sum of Rs. 44 lakhs was money given to him by his father and that part of it was given by his father-in-law. He added that as he was not in a position to prove this by documentary evidence, he had to agree to a sum of Rs. 24 lakhs being regarded as his income for the years in question. He stated further, that there had been no fraud or wilful neglect or intent to evade income tax involved in the disclosure of his income.

I am not satisfied with this explanation. As stated earlier, I wrote to the assessee on the 10th February 1964, informing him that I propose to make an order that he should pay a penalty under Section 80(1) and notified him that I was giving him an opportunity to show cause, if any, on or before 3rd March 1964, against such order being made. The assessee has not availed himself of this opportunity to show cause even by the extended date, 3rd April 1964, granted on the application of Messrs. Wijemanne & Co.

G
(Petitioner's
Document)
Order under
Section 80(1)
imposing
penalties in
respect of the
Years of
Assessment
1955/56, 1956/57
and 1957/58
21.4.64.
—Continued

If the assessee's returns for the three years had been accepted, the tax charged would have been as follows:-

1955/56	Rs. 309,571/-
1956/57	Nil
1957/58	475/-

The tax charged for these three years and accepted by the assessee is as follows:-

1955/56	Rs. 827,357/-
1956/57	Rs. 150,566/-
1957/58	Rs. 335,924/-

10

Thus the additional tax charged for the years is Rs. 517,786/-, Rs. 150,566/- and Rs. 335,449/-.

As the assessee has not satisfied me that there was no fraud or wilful neglect involved in the disclosure of income in his returns for the years of assessment 1955/56, 1956/57 and 1957/58, I order him, under Section 80(1) of the Income Tax Ordinance to pay the following sums as penalties for making incorrect returns:-

For 1955/56	Rs. 180,000/-
For 1956/57	Rs. 50,000/-
For 1957/58	Rs. 120,000/-

20

Sgd C. A. Wickremasinghe
Deputy Commissioner of Inland Revenue.

April 21st 1964.

R2**Decision of the Income Tax Board of Review**

R 2
Decision of the
Income Tax
Board of
Review
6. 10. 64

APPEAL TO THE BOARD OF REVIEW

UNDER SECTION 80 OF THE INCOME TAX ORDINANCE

MR. D. J. RANAWEERA

Income Tax File No: 52/9241

Members of the Board: Mr. R Ramachandran
Mr. S. N. B. Wijeyekoon
Mr. N. S. Perera

Dates of hearing: 14th July,
13th August,
14th August
& 5th September, 1964.

Present for the Appellant: Mr. M. Tiruchelvam, Q.C.,
Instructed by Mr. J. B. Puvimanasinghe,
Proctor.
Mr. D. J. Ranaweera, Appellant.

Present for the Department: Mr. Pullenayagam, Crown Counsel,
Mr. P. Naguleswaran, Crown Counsel,
Mr L. Piyasena, Deputy Commissioner of
Inland Revenue,
20 Mr. H. A. Mitrasena, Assessor,
Mr. N. C. Vitarana, Assessor.

Decision of the Board: (Annexed)

ORDER

D. J. Ranaweera's case

This is an appeal against imposition of penalties for incorrect returns under section 80(1) of the Income Tax Ordinance (Chapter 242) for the years of assessment 1955/56, 1956/57 and 1957/58. The Appellant is a landed proprietor and owned considerable property and had a very large income. The points in appeal are set out in the notice of appeal to the Board. They are 6 in number.

1. The first point raised is that the order imposing penalties is a nullity as the powers conferred on the Commissioner under Section 80(1) of the Tax Ordinance is ultra vires the Ceylon (Constitution and Independence) Order in Council 1946 and 1947. Appellant's contention is that the imposition of a penalty under section 80 (1) is an exercise by the Commissioner of judicial power and not being appointed by the Judicial Services Commission, he had no right to exercise such powers and that the powers conferred on him under section 80(1) is ultra vires the Ceylon (Constitution and Independence) Order in Council 1946 and 1947. He referred us to sections 53 and 55 of the Order in Council, which deals with judicature and the manner of appointment of judges. Under section 3 of that Order in Council a judicial officer is defined as any paid judicial officer. Appellant further stated that an Order under Section 80(1) is an order effecting rights of parties and as such it is an exercise of judicial power. He submitted that judicial power consisted in evaluation of facts, declaration of rights and enforcement.

He cited 64 N. L. R. 385 - A Bribery Tribunal Case.

The finding there was that the Bribery Tribunal whose members were not appointed by the Judicial Services Commission had no power to impose any sentence. The members were appointed by the Governor-General.

He further cited 63 N. L. R. 56 on a question of *res judicata*. It was there held that an earlier order of an Income Tax Board of Review on a particular point does not operate as *res judicata* in a subsequent appeal. It was also held in that case that the main function of the Board is to determine the quantum of assessment of quantification of assessment. This determination is an administrative function.

Appellant also referred us to the Quazi Court Case in 64 N. L. R. 419. In that case it was held that Quazi Courts were exercising judicial functions and that Quazis not being appointed by the Judicial Services Commission had no power to do so. Quazi Courts dealt with Muslim marriages, divorce, maintenance etc and made declarations of civil status and rights.

R 2
Decision of the
Income Tax
Board of
Review
6. 10. 64
—Continued

Appellant also stated that the powers conferred by section 80(1) of the Tax Ordinance are analogous to the powers conferred on the Courts under sections 90 and 92.

10 Crown Counsel cited 66 N. L. R. 63 where the Privy Council held in a Bribery Tribunal case that went up in appeal that a tribunal the members of which are not appointed by the Judicial Services Commission cannot supersede the jurisdiction of the ordinary court and cannot impose any sentence. They were not judicial officers. A Bribery Tribunal had power of imposing a fine up to Rs. 5000/- or to sentence to imprisonment up to 7 years.

Crown Counsel submitted that the imposition of a penalty under Section 80(1) was not an exercise of judicial power. He further stated that assuming that Appellant's contention is right namely that 20 the power conferred on the Commissioner under section 80 (1) is ultra vires, then the powers of the Board of Review to hear the appeal and confirm, reduce, increase, or annul the penalty would also be ultra vires. There is force in the argument. It was however not disputed that we had the right to hear the appeal.

Crown Counsel also submitted that judicial power cannot be delegated and said that a Magistrate for instance cannot delegate his function to another, but the Commissioner can delegate certain powers under section 2 of the Tax Ordinance which defines "Commissioner" implying thereby that he was not performing judicial 30 functions and therefore was able to delegate. If however the original power conferred on the Commissioner was invalid, then the delegation of such power too would not be valid.

These however are hypothetical arguments based on the assumption that the power conferred on the Commissioner is not valid and is ultra vires. We are of the view that the imposition of a penalty under Section 80(1) is not an exercise of judicial power and is not ultra vires the Order in Council referred to. It is a non-judicial power and is an executive function.

Judicial power signifies powers of a Court. It implies a right of imposing a sentence like a fine or imprisonment by a Criminal Court or making declarations of civil status and rights like a civil court. Imposition of a penalty under section 80 (1) is not passing a sentence or a declaration of civil status and rights. Indeed judicial powers are reserved by the Ordinance for the Courts under section 90 and 92. Under sections 90 and 92 an offender is brought to justice and punished unlike section 80(1). Indeed a penalty for incorrect return is a necessary adjunct to ascertainment of income and collection of tax to check evasion. 10

2. The second point is in regard to the question of showing cause by Appellant.

On 3. 8. 1962 the Deputy Commissioner noticed Appellant to show cause why action should not be taken against him to impose penalties under section 80(1) for the years of assessment 1955/56, 1956/57 and 1957/58 and under section 92(1) for the years of assessment 1950/51, 1951/52, 1952/53, 1953/54 and 1954/55.

On 30th March, 1963, Messrs E. B. Wikremanayake Q. C. and P. Navaratnarajah, Advocate, appeared before the Deputy Commissioner and discussed a compromise of both these matters and eventually 20 agreed to compound the offences arising under section 80(1) and Section 92(1) at Rs. 450,000/- and they agreed to bring Appellant before the Deputy Commissioner to sign an agreement to pay the Rs. 450,000/- as a compounding penalty.

Later on 3. 7. 63 the Appellant appeared with his Counsel Mr. Navaratnarajah and signed an agreement to pay the Rs. 450,000/- in respect of the years 1950/51 to 1957/58 within two months of the issue of a notice to pay by the Commissioner of Inland Revenue. Notice to pay this sum was issued to Appellant on 5. 7. 63 requiring him to pay the amount on or before 8. 9. 63. The Appellant failed 30 to honour the agreement and the entire amount still remains unpaid.

On 3. 8. 62 Appellant was called upon by the Deputy Commissioner to state in writing the grounds on which he relied to prove that there was no fraud or wilful neglect involved in the disclosure of his income and he replied stating that 44 lakhs was money given to him by his father and that part of it was given by his father-in-law. He added that as he was not in a position to prove this by documentary evidence, he had to agree to a sum of Rs. 24 lakhs being regarded as his income for the years in question.

He also stated that there had been no fraud or wilful neglect or intent to evade income tax involved in the disclosure of his income

R 2
Decision of the
Income Tax
Board of
Review
6. 10. 64
—Continued

On 10. 2. 64 the Deputy Commissioner wrote to Appellant by letter R1 that he proposed to make an Order that Appellant should pay a penalty under section 80(1) for the years of assessment 1955/56, 1956/57 and 1957/58 and informed him that he was giving him (Appellant) an opportunity to show cause if any, on or before 3. 3. 64 against such order being made. Section 80(1) applies only to these years.

10 On 3. 3. 64 a Junior Counsel appeared before the Deputy Commissioner and handed a letter R2 from Appellant's Proctors Messrs. D. Wijemanne & Co. and supported the application made in the letter. The letter stated that Appellant had cause to show and requested that as Counsel appearing for him was ill in hospital, a months time be granted to enable him to meet the Deputy Commissioner. The Deputy Commissioner then and there made order "time allowed" and informed Junior Counsel.

Counsel did not see the Deputy Commissioner within the month 3. 3. 64 to 3. 4. 64 or on the last day 3. 4. 64 or at any time before 20 21. 4. 64 when the Deputy Commissioner's order imposing penalty was made. No representations were made on behalf of Appellant after 3. 3. 64. As the extension of time granted had expired and as no further representations were made the Deputy Commissioner made his order on 21. 4. 64.

Appellant contends that on the letter R2 the Deputy Commissioner should have fixed a date of inquiry for Appellant to show cause and that Appellant was awaiting a reply to the letter R2 before an order was made.

30 Crown Counsel submitted that under section 80 (1) it is not necessary for the Deputy Commissioner to fix a date of inquiry and that all that is required is that Appellant should be given an opportunity to show cause, that he was given such an opportunity but he did not avail himself of the opportunity given even by the extended date 3. 4. 64.

Crown Counsel further submitted that natural justice required that a person should know the charge against him and that he should be given an opportunity to be heard and not that he should be heard.

He cited 61 N. L. R. 515, the case of Fernando vs. University of Ceylon where the Plaintiff complained that he was not given an opportunity to cross examine a lady witness. The Privy Council held that he knew the accusation against him and had been given an opportunity to show cause.

Section 80(1) does not require a date of inquiry to be fixed. What is required is that the Appellant should be given an opportunity to show cause. He was given an opportunity on or before 3. 3. 64 and on his application he was given an extended date, but he did not avail himself of even that opportunity. The case had 10 been protracted from August 1962 to April 1964 mainly by entry into a compromise and its subsequent dishonour. The Deputy Commissioner finding that Appellant was not availing himself of even the opportunity granted by the extended date made order imposing the penalties on 21. 4. 64. Appellant had been given the opportunity to show cause.

Appellant applied that the case be sent back or remitted to the Commissioner for Appellant to show cause. He stated that we had implied powers to remit the case to the Commissioner. He submitted that in that respect we were not different to the courts, and that 20 appellate bodies had express powers and implied powers.

In support of implied powers he cited:-

51 N. L. R. 549

56 N. L. R. 514

48 N. L. R. 314

In the first case it was held that the District Court had the power to inquire into a case of obstruction to a surveyor to whom a commission had been issued.

The last two cases were decisions of the Supreme Court in cases which went up in appeal from orders under the Registration 30 of Indian and Pakistani Residents Act. These cases were sent back to the Commissioner for the registration of Indian and Pakistani Residents though there were no express powers to remit. These cases indicate that the Courts have certain implied powers for the prevention of injustice.

We are an administrative body with very limited powers and our function is defined in section 74(1) of the Tax Ordinance (Chapter 242). Our function is to hear appeals "in the manner

hereinafter provided" that is to say according to the provisions laid down in the Income Tax Ordinance. We have no implied powers to remit the case to the Commissioner.

R 2
Decision of the
Income Tax
Board of
Review
6. 10. 64
—Continued

Under section 80(3) we have no power to remit the case to the Commissioner unlike in an appeal against an assessment under section 77(8). Section 77(8) states we may remit the case to the Commissioner, but such a provision is absent in section 80(3), Counsel for appellant urged that we should decide points 1 and 2 of the appeal that is the question of ultra vires and showing cause as preliminary points.
10 We were averse to making piecemeal orders and decided to hear the whole case and give a final order.

(3) Counsel for appellant then made 2 applications to us:—

1. To lead evidence to prove that there was no fraud or wilful neglect.
2. To raise a new point of law namely: The compromise entered into whereby appellant agreed to pay Rs. 450,000/- acts as estoppel to any proceeding under section 80(1).

He claimed that there is provision in the Income Tax Ordinance to permit him to lead evidence. He submitted that section 80(3) states that section 77 is applicable to this appeal and that under
20 77(6), 77(7) read with section 75(4) he could be permitted to lead evidence. 77(6) refers to a witness whom the Board may think fit to call. 77(7) sets out that that the Board may, subject to the provisions of section 75(4), admit or reject any evidence adduced. Section 75(4) provides for calling any evidence other than evidence adduced before the Commissioner. Appellant sought to lead evidence to prove that there was no fraud or wilful neglect. He stated that the income assessed by agreement was an arbitrary agreement and therefore
30 there was no fraud or wilful neglect, that out of the Rs. 44 lakhs given by Appellant's father and in part by his father-in-law, he had to agree to Rs. 24 lakhs being regarded as his income.

Crown Counsel submitted that Appellant had no right to call evidence before us for the first time and that it should have been done in the original proceedings. He referred us to sections 80(3), 77(7) and 75(4) and submitted that section 75(4) contemplated evidence to supplement evidence already led before the Commissioner and not to lead evidence for the first time here and that the words used in the section are "any evidence other than evidence adduced".

R 2
 Decision of the
 Income Tax
 Board of
 Review
 6. 10. 64
 —Continued

We are of the view that any evidence sought to be led should be supplementary to evidence already led before the Commissioner and not evidence *ab initio* and turn the Board into an original forum. We are also not disposed to consent to evidence being led before us from the start.

The new point of law Appellant sought to raise was one of estoppel. He said that the Department was estopped from taking any proceedings under section 80 in view of the agreement reached.

The agreement was not honoured by Appellant and nothing has been paid. He sought our permission to raise this point under 10 sections 80(3), 77(7) and 75(4).

Crown Counsel submitted that Appellant cannot be permitted to raise any new point here and stated that section 77(7) only relates to the 2nd part of section 75(4) that is to evidence and not to a new point of law. The submission seems to us to be correct. It is also observed that section 80(2) states "the appeal shall state the ground of objection to the order". We also cannot consent to entertain this new point as Appellant seeks to take advantage of his own breach. The applications to lead evidence before us and to raise a new point of law were disallowed. 20

(4) Appellant says that point 3 in the notice of appeal is related to point 2.

The order made by the Deputy Commissioner was made deliberately and not *per incuriam*,

(5) In regard to point 4 it is not contested that the assessments are final and conclusive under section 79 and no arguments were advanced.

(6) On point 5 Appellant states that the income was assessed by an arbitrary agreement imposed by the Department which they agreed to and there was no fraud or wilfull neglect. He further stated that there was no material to show that there was fraud or wilful neglect. 30

Crown Counsel stated that the burden was on the Appellant to prove that there was no fraud or wilful neglect, that there is no such proof and that the only inference that can be drawn from the vast disparity between the income assessed and the income returned is that there was fraud or wilful neglect.

Appellant made no returns of income for the years of assessment 1955/56, 1956/57 and 1957/58. The Assessor therefore acting under section 68(3) of the Tax Ordinance estimated the Appellant's income as follows.--

Year of assessment 1955/56	-	1,250,000
Year of assessment 1956/57	-	500,000
Year of assessment 1957/58	-	500,000

R 2
Decision of the
Income Tax
Board of
Review
6. 10. 64
—Continued

The Appellant appealed against these assessments and furnished returns showing his income or loss to be as follows:-

Year of assessment 1955/56	income	-	421,678
Year of assessment 1956/57	loss	-	83,674
Year of assessment 1957/58	income	-	13,819

After detailed investigation agreement was reached with Appellant under section 73(2) of the Tax Ordinance and Appellant agreed to his assessable income being assessed as follows:-

1955/56	-	Assessable income	-	1,136,924
		Tax	-	827,357
1956/57	-	Assessable income	-	270,629
		Tax	-	150,566
1957/58	-	Assessable income	-	447,793
		Tax	-	335,924

Appellant has not proved that there was no fraud or wilful neglect involved in the disclosure of his income. It must have been clear to Appellant from the vast disparity between the income he returned and that assessed that the income returned was grossly undervalued and a large part of the income hidden to avoid tax.

(7) On point 6 Appellant states that the penalties are excessive and that we have a discretion to reduce them. Tax that would have been lost to revenue is Rs. 1,003,801/-. If Appellant's returns for the three years had been accepted the tax charged would have been as follows:-

Year of assessment 1955/56	-	Rs. 309,571
Year of assessment 1956/57	-	Nil
Year of assessment 1957/58	-	Rs. 475

The tax charged for these three years and accepted by the Appellant is as follows:-

Year of assessment 1956/57	-	827,357
Year of assessment 1957/58	-	150,566
Year of assessment 1958/59	-	335,924

Therefore the additional tax charged for the three years is Rs. 517,786/-, Rs. 150,566/- and Rs. 335,449/-, aggregating Rs. 1,003,801/-. Penalties imposed should recompense the department for the labour involved in protracted investigation of concealed income and to make tax evasion unprofitable.

R 2
Decision of the
Income Tax
Board of
Review
6. 10. 64
—Continued

The penalties imposed are—

Year of assessment 1955/56	—	180,000
Year of assessment 1956/57	—	50,000
Year of assessment 1957/58	—	120,000

350,000/-

The penalties are not excessive.

We may add that concealment of income where the income is private is widely prevalent.

The penalties are confirmed and the appeal dismissed.

Sgd.

10

R. Ramachandran
Chairman.
6th October, 1964.

True Copy,
Sgd. Illegibly
Clerk to the Board of Review,
Inland Revenue.


~~~~~  
PRINTED BY MERCANTILE STATIONERS  
12 BALLIE LANE  
COLOMBO 1.  
PHONE 629  
~~~~~