

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

P. T. Weerasinghe,  
No. 29B, S. De S. Jayasinghe  
Mawatha, Kalubowila,  
Dehiwala.  
Of the sole proprietorship  
“Lanka Sportreizen”.  
Petitioner

**CASE NO: CA/WRIT/397/2018**

Vs.

The Commissioner General of  
Inland Revenue,  
Department of Inland Revenue,  
Colombo 02.  
Respondent

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Uditha Egalahewa, P.C., with Amaranath  
Fernando for the Petitioner.  
Nirmalan Wigneswaran, S.S.C., for the  
Respondent.

Supported on: 15.07.2020

Decided on: 20.07.2020

Mahinda Samayawardhena, J.

The Petitioner filed this application predominantly to quash P1 and P3 whereby he was asked to pay tax in default stated therein; and the Magistrate's Court proceedings initiated thereon to recover the same.

The pivotal argument of the Petitioner is he was not served with notice of assessment prior to the final decision taken by the Respondent, the Commissioner General of Inland Revenue. It is common ground that service of notice of assessment is a *sine qua non* for a final decision, as it allows the taxpayer to appeal against such assessment.

The Petitioner says he did not receive notice of assessment in the instant matter. Conversely, the Respondent says he issued the same.

The Respondent vehemently opposes the issuance of formal notice on him and takes up three preliminary objections in order to have the application of the Petitioner dismissed *in limine*.

Firstly, the Respondent draws the attention of the Court particularly to paragraphs 7 and 8 of the petition, to submit that the contents of the said paragraphs preclude the Petitioner from taking up the position that notice of assessment was not served on him. The Respondent emphasises that in the said two paragraphs, the Petitioner has identified P2 as "*objection filed under section 41(2) of the VAT Act*". The Respondent contends section 41(2) can only be invoked, as the section itself specifies, "*where an assessment has been made*", and therefore, the Petitioner cannot now say notice of assessment was not served.

In my view, according to this argument itself, paragraphs 7 and 8 of the petition cannot be read in isolation and shall be read with P2. When the said paragraphs are read with P2, I am unable to agree with the argument of the Respondent.

In P2, the Petitioner expressly informs the Respondent “*Though the default notice (P1) has been issued, so far the taxpayer has not received the notices of assessment*”. The Petitioner further states therein “*I shall be grateful if you will let me know whether the assessments have been issued and if so registration numbers relating to the issue so that I can trace the assessments.*”

The Respondent states in paragraph 4(u) of the limited statement of objections “*The assessments were posted to the Petitioner on 29 August 2013. However, no records are presently available in this regard, as records are only retained for five years in the Department of Inland Revenue.*”

But when the Tax in Default notice P1 dated 14.03.2014 was sent to the Petitioner, the Petitioner informed the Respondent within a few days, by P2 dated 01.04.2014, that he did not receive notice of assessment. The Respondent did not at that time contradict the Petitioner’s claim and give reference numbers as requested by the Petitioner. Thereafter, the Respondent sent a letter to the Petitioner in May 2017 (P3) followed by further correspondence.

I overrule the first preliminary objection.

The second preliminary objection is the Assessor has not been made a party to this application and only the Commissioner General of Inland Revenue has been made a party, and therefore

the application shall be dismissed. This objection is devoid of merit. The Assessor need not be made a party.

I overrule the second preliminary objection.

The last preliminary objection is the Petitioner has not sought to quash the Certificate of Tax in Default filed before the Magistrate's Court marked P15(b). The Petitioner by paragraph (i) of the prayer to the petition has sought a writ of prohibition preventing the Respondent from taking further action based on P15(b). This is sufficient. Even otherwise, if P3 is quashed, P15(b) cannot survive.

The last preliminary objection is also overruled.

I issue (a) formal notice on the Respondent and (b) an interim order staying further proceedings in Case No.94019/08/18 of the Magistrate's Court of Colombo until this matter is finally determined by this Court.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal