IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Writs of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kider Mohomed Shihabdeen Ayesha
No. 410/16, Baudhaloka Mawatha,
Colombo 07.

Petitioner

Vs.

CA (Writ) No. 312/2020

1. Nadun Guruge
The Commissioner General
Department of Inland Revenue
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.

1(A). H. M. W. C. Bandara
The Commissioner General
Department of Inland Revenue
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

1(B). D. R. S. Hapuarachchi
The Commisioner General
Department of Inland Revenue
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.

2. Sarath Abeyratne
Senior Commisioner
Department of Inland Revenue
Regional Officer,
Anuradhapura.

3. P. W. K. M. J. Bandara
Assistant Commissioner
Department of Inland Revenue
Regional Office,
Anuradhapura.

4. H.P.K.W. Pathirana
Assistant Commissioner
Department of Inland Revenue
Regional Office,
Anuradhapura.

5. C. Nishani Ariyapala
Assistant Commissioner
Department of Inland Revenue,
Regional Office,
Anuradhapura.

Respondents

Before : **Hon. M Sampath K. B Wijeratne,J.(CA)**

: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsels : Uditha Egalahewa, P.C. with Bhagya Herath instructed by Kanchana Senanayake for the Petitioner.

Chaya Sri Nammuni, D.S.G for the Respondents.

Written Submissions : By Respondents 03.04.2024
By Petitioner 17.04.2024

Argued on : 27.10.2023
06.12.2023
13.12.2023

Decided on : 28.06.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

1) The Petitioner had instituted this action against the Commissioner General of the Department of Inland Revenue and the other Respondents to quash the documents marked as P19 and P24 which are the notices of default taxes and to quash the amended certificate of tax and notice of seizures marked and produced as P29(b) and P26(i) to P26(LXXII).

2) The said reliefs are as follows;

a) to issue notice on the Respondents;

b) call for and examine the record;

c) to issue a Writ of Certiorari quashing the Notice of Default dated 18.10.2019 marked P19;

d) to issue a Writ of Certiorari quashing, Notice of Default dated 01.01.2020 marked P24;

e) to issue a Writ of Certiorari quashing the amended certificate of tax in default dated 12th March 2020 marked P29(b);

f) issue a Writ of Certiorari quashing the notice of seizures dated 11.02.2020 marked P26(1) to P29(LXXⅡ);

g) stay the proceedings in case no. 1829 in the Magistrate Court of Anuradhapura pending the hearing and final determination of this application;

h) to grant costs; and

i) to grant such other and further reliefs.

Facts of the Petitioner's case

3) The Petitioner has contended that the Petitioner is a citizen of Sri Lanka. The Petitioner is a tax payer of the 1st Respondent's Department. Further the Petitioner had stated for the assessment years 2008/2009 to 2013/2014 the Petitioner had duly paid her income tax payments.

4) Subsequently, additional assessment notices had been issued to the Petitioner dated 18th April 2016 in respect of an alleged additional income received by rent and salary.

5) The Petitioner is a resident of Baudhaloka Mawatha Colombo 7 since the year 2000. The aforesaid assessment notices were served at Katuwela Road, Madewachchiya. The Petitioner had not received the said notices and had not responded to it.

6) Later a notice of default had been dispatched to the Petitioner to her residence at Katuwela Road, Madewachchiya on 3rd November 2016.

7) The Petitioner did not receive the said default notice. Subsequently the 1st Respondent had sent further reminders to the Petitioner.

8) On that the Petitioner had received communications of the pending matters at the Department of Inland Revenue and the Petitioner had sent two detailed replies to the Department of Inland Revenue which is marked and produced as P6 (a) and P6 (b) for which the Petitioner had not received a reply.

9) Later, on the request made by the Petitioner, an interview was granted by the Respondents to which the Petitioner attended and objected for the additional assessment made by the 1st Respondent and to revise it.

10) As a result of the aforesaid request, additional notice of assessment dated 26th July 2017 was issued and the Petitioner duly made the payments accordingly and no appeal had been lodged against the said notice.

11) On 4th June 2019 the Petitioner was served with a notice to submit further documents for the assessment years 2015/2016 to 2017/2018 and was requested to be present for an interview on 24th September 2019.

12) The Petitioner has contended, that the Petitioner had already settled the assessment values for the year 2011/2012 and 2012/2013. Therefore, the Petitioner had not made any appeal for the assessment notice dated 26th July 2017.

13) The reminder letters regarding the assessment payments dated 3rd July 2019 and 19th July 2019 had been dispatched to the Madewachchiya address. Subsequently, the Petitioner had replied to those letters and had requested additional time to submit a detailed explanation.

14) Later the Petitioner was called for an interview on 24th September 2019. The said interview had finally taken place on 18th October 2019. The grounds on which the interview was held was incorrect and after making the payment for the assessment years 2011/2012 a fresh assessment had been issued.

15) Further the 4th Respondent had taken steps to issue tax in default notice for the year 2011/2012 and 2012/2013 imposing Rs. 12,945,648/- for the year 2011/2012 and Rs. 5,038,797/- for the year 2012/2013.

16) The Petitioner vehemently objected to the said notice of default marked and produced as P19 which is illegal, unlawful and irrational.

17) Subsequently, once again the Petitioner was served with a further notice of default on 1st January 2020 where the 3rd Respondent had deducted the payments made by P11(a) and P11(b) and had issued a further tax default notice by P24.

18) The Petitioner has contended the said tax default notice is completely repugnant to the relevant provisions of the Inland Revenue Act No.10 of 2006 which was objected to by the Petitioner by letter marked and produced as P25.

19) Later the Department of Inland Revenue had sent seizure notices to the Banks where the Petitioner's accounts are maintained and issued summons from the Magistrate Court of Anuradhapura for non-payment of tax on a sum of Rs.179,996,393/-

20) After obtaining the case record, the Petitioner had found an amended certificate of tax in default which is marked and produced as P29(a) and P29(b) which is illegal, irrational and wrongful which violated the Provisions of the Inland Revenue Act No.10 of 2006.

21) On the said grounds the Petitioner had sought to invoke the Writ Jurisdiction of this Court for the conduct of *ultra vires*, illegal, unreasonable, unfair and irrational which violates the legitimate expectation of the Petitioner.

Objections of the 1st to 5th Respondents

22) The Respondents had stated that the Petitioner had not submitted accurate information in her returns. Her additional income had not been declared and revealed. On that, due payment of income tax had been evaded by the Petitioner.

23) On the said grounds, P1 (a) to P1 (f) additional assessments had been issued by the Respondents with regard to the undeclared rent and salary which was not included in the declared returns.

24) However, the Petitioner failed to pay the taxes referred to in the additional assessment and or appeal against that. Thus the 6 notices of assessments were deemed to be final as per the Provisions of the Inland Revenue Act.

25) Thereafter, the Respondents had issued 2 notices of tax in default and reminders which are marked and produced as P2 (a), P2 (b) and P3.

26) As the Petitioner had not honoured the tax default notices the Respondents have informed the Petitioner by P3 document that legal action will be instituted on the unpaid tax default notices.

27) As the aforesaid P3 notice had been flouted the Respondents had instituted action in the Magistrate Court of Anuradhpura based on the certificate of tax in default.

28) Even though the Petitioner had failed to appear the Magistrate had not reissued notice and the case was laid by until the verification of the Petitioner's address.

29) Further the Respondents have contended that the Petitioner's letter dated 29th November 2016 which is marked as P6 (b) had requested that the assessment issued to the Petitioner be canceled.

30) Letters marked as 1R5 and 1R5 (a) are letters of intimation and not assessments and an appeal sent prior to the assessment cannot be considered by the Respondents. The actual assessments are dated 30th November 2016 which is marked as 1R6 and 1R6 (a).

31) On the said grounds, the Respondents had contended that the Respondents had taken steps to recover the tax due by the Petitioner as the assessments had been finalized.

32) On that, the Petitioner does not have any legal right for discretionary remedies of the Writs of Certiorari and Mandamus and the Respondents had moved to dismiss the application of the Petitioner.

Disputed facts

33) The argument commenced on 27th October 2023 and the Counsel for the Petitioner concluded his submissions. Subsequently the matter was refixed and the learned Deputy Solicitor General made her submissions on 6th December 2023 and the Counsel for the Petitioner concluded his reply submissions on 13th December 2023. Thereafter both parties have filed their written submissions.

34) In considering the petition, objections, written submissions, documents and arguments raised before this court, to address the issues in this matter the following disputed points should be considered.

I. Is the Petitioner a tax payer?

II. Has the Petitioner disclosed all her income for the assessment years 2008/2009 to 2013/2014 as per P29 (a) and (b) notices?

III. If not, is the Petitioner liable to pay the income tax as per the default notices 1R12 and 1R15?

I) Is the Petitioner a tax payer?

35) Both parties have admitted that the Petitioner is a tax payer.

36) The issue in this case had arisen after the issuance of P1 (a) to P1 (f) additional notices of assessments on which the dispute of payment of tax for the years 2008/2009 to 2013/2014 had evolved.

37) Therefore, it is obvious that the Petitioner is a tax payer to the Respondent Inland Revenue Department.

38) It is noteworthy to consider the literary construction of the definition of tax. Black's Law Dictionary[1] gives the definition for tax as follows;

[1] *Black's Law Dictionary*, 11th ed., Bryan A. Garner, pg 1758.

> *"A charge, usu. monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money".*
>
> *"Taxes (including, in the term, assessments) are burdens or charges imposed by the legislature, or under its authority, upon persons or property, to raise money for public, as distinguished from private purposes, or to accomplish some end or object public in its nature." 2 John F. Dillon, Commentaries on the Law of Municipal Corporations 727-28 (3d ed. 1881).*
>
> *"Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs. This definition of taxes, often referred to as 'Cooley's definition,' has been quoted and indorsed, or approved, expressly or otherwise, by many different courts.*
> *While this definition of taxes characterizes them as 'contri-butions,' other definitions refer to them as 'imposts,' 'duty or impost,' "charges,' 'burdens,' or 'exactions'; but these variations in phraseology are of no practical importance." 1 Thomas M. Cooley, The Law of Taxation 5 1, at 61-63 (Clark A. Nichols ed., , 4th ed. 1924).*

39) In the said definition it is emphasized taxes are enforced proportional contributions from the persons and property levied by the State by virtue of its sovereignty for the support of the government and for all public needs.

40) Therefore it is obvious that taxes are paid by the public to benefit the State affairs and to make use of it for the betterment of the public.

41) Further, it is interesting to read the interpretation given by N.S. Bindra in his book of ***Interpretation of Statutes***.[2]

42) Bindra has defined and expressed taxation as follows[3];

> *"The concept of a welfare state is that the state is entitled to make a levy even against the will of the people sought to be benefited. Therefore, it is of no relevance that the person sought to be benefited by the Act does not consider it to be so, In a taxing provision if there are two possible constructions of the words of the statute then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him. If there is authority to impose taxes after doing a certain act, the State cannot impose the taxes unless that act is done and the authority must show, if challenged, that the act was done.*
> *Thus, in* ***Commissioner Central Excise and Customs v Larsen and Toubro Ltd*** *the Supreme Court was required to decide whether service tax could be levied upon indivisible work contracts before the Finance Act of 2007, which expressly made work contracts taxable. The Supreme Court answered the question against the revenue on the reasoning that composite work contracts combine sale of goods and services. Whilst the former was taxable by the States, the second could be taxed by the Centre. In the absence of an express legislative demarcation between the Centre and the States, such a tax could not be levied."*

43) Further, he has reiterated Rule of Determining Tax Liability as follows[4];

> *"Cases under the taxing Acts always resolve themselves into the question whether or not the words of the Act have reached the alleged subject of taxation. In construing a taxing statute one has to look merely at what is clearly said. There is no equity about a tax. There is no room for any intendment. There is no presumption as to a tax. Nothing is to be read in and nothing is to be implied. One can only look fairly at the language used. When a transaction is embodied in a*

[2] N S Brinda, *Interpretation of Statutes*, 12th Ed,2017
[3] N S Brinda, *Interpretation of Statutes*, 12th Ed,2017 pg.860
[4] N S Brinda, *Interpretation of Statutes*, 12th Ed,2017 pg.862

> *document the taxing statute has to be applied in accordance with the legal rights of the parties to the transaction, and the liability to tax depends upon the meaning and content of the language used in accordance with the ordinary rules of construction."*

44) To support his rules, he has cited a judgement of Lord Cairn. I reproduce the said judgement as follows[5];

> *"As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free; however apparently within the spirit of the law, the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."*

45) There too, it is specified, taxation should be applied in accordance with the legal rights of the parties to the transaction. Further it is an understood principle in the aforesaid legal literature that tax is imposed for the welfare of the State and the State is entitled to make a levy even against the will of the people, to benefit the public. Therefore, the assessment of tax and the payment of tax should not be undermined by a party.

[5] Partington v AG (1869) LR 4 HL 100

II) Has the Petitioner disclosed all her income for the assessment years 2008/2009 to 2013/2014 as per P29 (a) and (b) notices?

46) The question that had arisen in the instant Writ application is whether the Petitioner has defaulted tax payments referred to in the additional notices of assessment issued by the Respondents which is marked and produced as P1(a) to P1(f).

47) The argument raised by the Petitioner is that the Petitioner had already settled all the payment of taxes which were referred to in the additional notices and those matters had been looked into by the tax department at the interview held with the Petitioner by the Assessor. The notes of the said interview are marked and produced as P9.

48) However, the said position was vehemently objected for and denied by the Counsel for the Respondents as P9 does not carry the name of the person who conducted the said inquiry and the Respondents were confounded by the reliefs granted in P9.

49) Therefore, the Respondents have brought to the notice of court that an assessor cannot grant the reliefs mentioned in P9 and that does not prevent the Respondents from issuing additional notices of assessments based on the information received by the Respondents and after detecting the relevant documents pertinent to the additional income for which the Petitioner had failed to answer truthfully.

50) The Petitioner had submitted tax returns for the years 2008/2009 to 2013/2014 which are marked and produced by the Respondent as 1R1 (a) to 1R1 (f).

51) The question that had arisen was whether the Petitioner had submitted accurate information on the said tax returns. On that the Petitioner had deliberately defaulted and evaded due payment of income tax to the Department of Inland Revenue.

52) The said matter was identified by the Respondents. 06 notices of assessments had been issued to the Petitioner which is already referred to as P1 (a) to P1 (f).

53) The said assessment notices had contained that the Petitioner had failed to submit the rent and salary income. After the issuance of the said notices as the Petitioner had not responded, the Respondents had issued P2 (a) to P2(c) tax default notices for the unpaid taxes. The Petitioner had failed to honour the said notices as well.

54) As the Petitioner has evaded the payment after the default notice, the Respondent had issued further notices and reminder letter to the Petitioner which is marked and produced as P4 and P5.

55) As the Petitioner has failed to reply to the said letters, the Respondents had taken steps to institute an action before the Magistrate Court of Anuradhapura based on the certificate of tax default which is marked and produced as P29 (a) and P29 (b).

56) The said position is strongly objected to by the counsel for the Petitioner. The position taken by the counsel for the Petitioner is, that the Petitioner had already settled all the overdue taxes referenced in the additional notice of assessment. Therefore, it is illegal and arbitrary to issue such assessment notices for which the Petitioner is not liable to make any payment.

57) Further, the Petitioner's contention was the statute only provides to issue additional assessments and not multiple additional assessments. The Petitioner has relied on P9 notes, where the Petitioner had participated for an interview and an assessor had considered the payments made by the Petitioner and had granted reliefs referred to in the said notes.

58) In considering the aforesaid position, I draw my attention to the Provisions of the Inland Revenue Act No. 10 of 2006. Section 163(1)(a) and (b) states as follows ;

> *(1) Where any person who in the opinion of an Assessor is liable to any income tax for any year of assessment, has not paid such tax or has paid an amount less than the proper amount which he ought to have paid as such tax for such year of assessment, an Assessor may, subject to the provisions of subsection (3) and (5) and after the fifteenth day of November immediately succeeding that year of assessment, assess the amount which in the judgment of the Assessor ought to have been paid by such person, and shall by notice in writing require such person to pay forthwith -*
>
> > *(a) the amount of tax so assessed, if such person has not paid any tax for that year of assessment; or*
> > *(b) the difference between the amount of tax so assessed and the amount of tax paid by such person for that year of assessment, if such person has paid any amount as tax for that year of assessment:*

59) The Provisions referred to in the aforesaid section are absolutely clear; if a person has paid an amount lesser than the proper amount which he ought to have paid, the assessor can assess the difference and the amount that he ought to pay or the difference between the amount can be taxed.

60) Therefore, the position taken by the Petitioner cannot be sustained as the Provisions of the Inland Revenue Act is clear and it supersedes the facts pertinent to the Petitioner's case.

61) On the said grounds, additional assessment had been issued to the Petitioner. The said assessment should be paid by the Petitioner unless the Commissioner General of the Department of Inland Revenue holds the payable of the said tax under Section 173(5) and Section 173 (6) of the Inland Revenue Act.

62) The said Sections are reproduced as follows;

> *"(5); Where any assessment has been made on any person for any year of assessment by an Assessor, the amount of the tax as specified in the notice of assessment shall, for the purposes of subsection (3), be deemed to be the tax payable by that person for that year of assessment."*
>
> *"(6); Tax shall be paid notwithstanding any appeal against the assessment, unless the Commissioner-General orders that payment of tax or any part thereof be held over pending the determination of such appeal, and the amount of the tax or part thereof so held over shall not be deemed to be in default."*

63) Further, it is specified under Section 173(6) the Petitioner should pay the assessed tax despite preferring an appeal.

64) In the instant action although the notice of assessment, tax in default letters and reminders were issued, the Petitioner had failed to lodge an appeal. Instead, the Petitioner objected and sent a request letter to cancel the assessment notice, relying upon the P9

interview notes, which had been conducted without following the proper rules and regulations of the Inland Revenue Act.

65) On perusal of P9 document as the Deputy Solicitor General argued there is no name of the assessor who conducted the said interview with the Petitioner and the agent of the Petitioner. The manner in which the reliefs had been granted cannot be accepted as a normal interview conducted by an assessor.

66) Further, the signature on the said P9 interview notes is not known to the Respondents.

67) Therefore, the said document had created suspicion and doubt that it had been conducted by an assessor who is not known to the Respondents. It also should be noted that this is a departmental document which had been obtained by the Petitioner which is also questionable. Thus, taking disciplinary actions or quashing P9 is a matter for the Department of Inland Revenue.

68) After auditing the documents relevant to the assessment and documents produced by the Petitioner, the Respondents came to the conclusion that the Petitioner had failed to provide correct information regarding the Payment of Tax.

69) It should be noted that this case is not an appeal from the decision taken by the Inland Revenue Department or the Tax Appeal Commission. This is a Writ application to quash the seizure notices and to amend the certificate of tax by issuing a Writ of Certiorari. I will discuss later, if the Respondents had acted in accordance to the Provisions of the Inland Revenue Act and had not violated any legal rights of the Petitioner and/or no illegalities had been conducted, whether the Petitioner has the right to pursue the Writ of Certiorari in this application.

70) However, the Petitioner in his petition and in the submissions had challenged that the Respondents have acted illegally and or

committed wrongful acts in respect of the Petitioner's tax assessments.

71) Counsel for the Petitioner tried to emphasize that the issuance of P10 additional notice of assessment is illegal. Further the Respondents requested that the Petitioner to be present at an interview for the assessment years 2015/2016 and 2016/2017. The said assessment P12 had been served with notice to the Petitioner's Madewachchiya address.

72) From the outset the Petitioner had taken up the position that the Petitioner had shifted to Baudhaloka Mawatha Colombo 07. Therefore, she did not get the said letters of assessment at the correct time. Although the Petitioner had taken up this position, the Petitioner had failed to inform the Inland Revenue Department of the change of address and she had continued to proceed with the interview with the same address in the letters written to the Deputy Commissioner of Inland Revenue by P15, P16, P25 written in the year 2019 and 2020.

73) Therefore, the Petitioner's position that she did not receive the additional notices of assessments and further reminders sent by the Department of Inland Revenue cannot be accepted.

74) Considering the arguments and the submissions made by the Respondents, the Respondents had taken steps to issue the additional assessment notices after considering all the documents tendered by the Petitioner and identifying that the Petitioner had failed to disclose the purchase of property in Colombo 06 and Colombo 07 and purchase of jewelry and rental incomes. The counsel for the Petitioner argued that the Colombo 06 property was purchased in 2006. However the Petitioner's contention was that the Colombo 06 and 07 properties were gifted by the father of the Petitioner.

75) The said position taken by the Petitioner had failed as the Petitioner's father's tax file had been misplaced and could not be traced and the funds utilized to purchase the properties were not disclosed properly by the Petitioner. As per the Respondents there were no other documents to prove that the Petitioner's father had purchased the said properties. Thus, the tax pertinent to the said properties had been included in the additional assessments.

76) When considering the Petitioner's stand that multiple assessments had been issued against her cannot be accepted as the Respondents have acted according to the Provisions of the Inland Revenue Act. After calling for documents and interviewing the Petitioner and the agent, the Respondents had come to the conclusion that the aforesaid incorrect information and tax returns had been submitted by the Petitioner.

77) The Respondents have issued 1R10 amended notice of assessment after deducting the payments made by the Petitioner. Further, considering the request made by the Petitioner dated 24th July 2020 the amended tax certificates 1R14 and 1R15 had been issued.

78) The Counsel for the Respondents had relied that the said amended assessment and tax certificates had been issued after holding the interview with the Petitioner and in considering the payments made after the impugned P9 interview notes. To my view those are not multiple assessments or tax certificates.

79) The narrow view of the Petitioner is that the Respondents have acted illegally and issued multiple assessments which cannot be accepted.

80) Furthermore, the Petitioner had objected to the assessments prior to receiving the same.

81) On the said grounds, the written objections sent by the Petitioner cannot be accepted as an appeal as the assessment notices were not submitted by the Respondents.

82) At this stage I draw my attention to Section 165 of the Inland Revenue Act.

83) The said Section reads as follows;

> *(1)Any person who is aggrieved by the amount of an assessment made under this Act or by the amount of any valuation for the purposes of this Act may, within a period of thirty days after the date of the notice of assessment, appeal to the Commissioner-General against such assessment or valuation:*
> *Provided that the Commissioner-General, upon being satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.*
> *(2) Every appeal shall be preferred by a petition in writing addressed to the Commissioner-General and shall state precisely the grounds of such appeal.*
> *(3) Where the assessment appealed against has been made in the absence of a return, the petition of appeal shall be sent together with a return duly made.*

84) It is abundantly clear on the aforesaid Provision, if a person is aggrieved by the assessment or valuation, within a period of 30 days after the notice of the date of the assessment, can appeal to the Commissioner General.

85) The Petitioner in the instant action had not made use of the said provision and the appeal against the assessment or valuation had

not been made. Therefore, the Respondents had correctly specified that the appealable period had already lapsed.

86) On the said context, my considered view is that the Respondents had not violated any provisions of the Inland Revenue Act when taking steps against the Petitioner.

III) If not, can the Petitioner maintain this application to obtain reliefs under Writ Jurisdiction?

87) This is an application that the Petitioner has instituted to obtain reliefs under the Writ of Certiorari.

88) The Writ of Certiorari is defined in Dr. Sunil Cooray's Book of ***Principles of Administrative Law in Sri Lanka*** [6] as follows;

> *"Quashing by certiorari is only declaratory of the legal position where it is an invalid act that is quashed,*
> *Quashing by certiorari for error of law on face of record.*
> *Is constitutive, not merely declaratory,*
> *Quashing only the bad which is severable from the good which is left intact, like in an appeal,*
> *Unlike in an appeal, no substitution of good order for the bad one,*
> *Once decision is quashed by certiorari, fresh decision may, and must when so urged be made, if necessary after fresh inquiry, except when there was no jurisdiction"*

89) The Petitioner had sought in the instant action to issue a Writ of Certiorari to quash the notices of default marked and produced as

[6] 3rd Ed Vol 2 Pg 769

P19 and P24 and the amended certificate of tax which is marked and produced as P29(b).

90) These documents were issued by the Respondents acting in their official capacity. To quash documents issued by a government official under Writ of Certiorari the said documents should have been issued arbitrarily, illegally or in violation of the principles of the relevant acts under which the said documents are issued.

91) In the instant application on the perusal of the documents and the interview notes I do not see that the Respondents have acted illegally, arbitrarily and/or in violation of the Provisions of the Inland Revenue Act.

92) As I have stated above, this is a Writ application and not a tax appeal. However, parties have gone beyond their limits explaining the calculation of the tax to be payable and to quash the tax notices.

93) The main context is to overview that the Respondents have acted arbitrarily, illegally and or without following the provisions of the Inland Revenue Act and issued P19, P24 and P29 (b) notices and amended tax certificate.

94) However, the documents issued by the Respondents had been issued after considering the assessments forwarded by the Petitioner. Further, the Respondents have acted upon considering the P9 notes, a doubtful interview which had been conducted without referring to the assessor's name and granted concessions which under the normal circumstances could not have occurred.

95) In the said circumstances as I have reiterated above, I do not see any violation on the part of the Respondents issuing P19, P24 and P29 (b) documents.

96) At this stage, I draw my attention to the following decision. ***Premachandra V Montague Jayawickrama and Others***[7] His

[7] [1994] 2 SLR 90.

Lordship the Chief Justice in the said judgement had referred to as follows;

> *"It is a cardinal maxim that every power has legal limits, however wide the language of the empowering Act. If the Court finds that the power has been exercised oppressively or unreasonably, or if there has been some procedural failing, such as not allowing a person affected to put forward his case, the act may be condemned as unlawful. There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted".*

97) Further, Justice Palakidnar in the case of **Podimahtthaya V the Land Reform Commission**[8] had said that;

> *"On the more basic circumstance of the interference of this Court by a writ, one must examine whether there was reasonableness This Court can interfere where there is manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice. The conduct of the administrative authority must be legal and regular as one correlates the acts complained about to the powers given under the statute".*

[8] [1990] 2 SLR 416 at page 419.

98) In the said decision it is decided a person who is entitled to obtain a Writ has to prove the illegality of the government official.

99) I note it is decided in the following judgement of **Mendis v. Seema Sahitha Panadura Janatha SanthakaPravahanaSevaya and Others**[9]Justice Sarath N. Silva, J. expressed that;

> *"It is clear these Writs come within the purview of administrative law which is a branch of law that has been developed by courts for the control of the exercise of governmental or statutory powers by mainly public authorities.... Writs of Certiorari and Prohibition are instruments of Public Law to quash and restrain illegal governmental and administrative action."*

> *"The essential ingredient is that a member of the public who is affected by such a decision has to submit to the jurisdiction of the authority whose action is subject to review. In other words, there is an unequal relationship between the authority wielding power and the individual who has to submit to the jurisdiction of that authority."*

100) Moreover, in ***Hapuarachchi and Others Vs Commissioner of Elections and Another***[10] Dr. Shirani Bandaranayake, J. held that;

> *"To deprive a person of knowing the reasons for a decision which affects him would not only be arbitrary, but also a violation of his right to equal protection of the law."*

[9] [1995] 2 SLR 284
[10] [2009] 1 SLR 1

> *"On a consideration of our case law and in the light of the attitude taken by Courts in other countries, it is quite clear that giving reasons for an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Moreover in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily, in coming to their conclusion."*

101) In considering the aforesaid decisions it is obvious that the Petitioner is not entitled to obtain a Writ of Certiorari in the instant application as the Respondents have not violated any legal provisions of the Inland Revenue Act and or acted illegally or arbitrarily.

102) For the reasons spelt out above I would like to draw my attention to a phrase referred to in Black's Law Dictionary[11]. The reference includes the Latin term ***"Nemo est supra leges"***, which means "**no one is above the laws.**"

103) Thus, in the instant action although I have decided that there are no grounds supported to invoke the Writ Jurisdiction, at the same time, considering the payment of tax it is imposed by the Legislature, people who are governed by the said Legislature are bound to make the payment and no one should evade it, as that is how the State mechanism functions to benefit the public.

---

[11] *Black's Law Dictionary*, 11th ed., Bryan A. Garner, pg. 1984 , Ref No.1709

CONCLUSION

104) In view of the aforesaid analyzation and consideration of the written submissions, documents pertinent to this application I dismiss the petition dated 7th September 2020.

105) I fix tax cost to be payable by the Petitioner to the Respondents.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree

Judge of the Court of Appeal