

**IN THE HIGH COURT OF FIJI**

**CIVIL JURISDICTION**

**ACTION NO. 152 OF 1988**

**BETWEEN :**

**THE COMMISSIONER OF INLAND REVENUE**

**PLAINTIFF**

**AND :**

**ARIYAN BUILDING & MARINE SUPPLIES LTD**

**DEFENDANT**

Mr R Hayhow for the Plaintiff  
M V Paramanandam for the Defendant

**RULING**

The Plaintiff, the commissioner of Inland Revenue has taken out writ to recover arrears of Income Tax and Late Penalty Payment for the five income years 1980-1984 amounting to \$15,994.11. The breakdown is given in the Statement of Claim.

The Defence has three statements put forward by way of Defence.

- (a) The assessment were lodged on estimated figures.
- (b) The Defendant is currently in the process of submitting his returns.
- (c) There is every likelihood that the Defendant will not owe any sum of money.

The Plaintiff filed summons supported by an affidavit to strike out the Defence which came up for hearing in chambers on 18/5/90. Both counsel were heard Mr Paramanandam moved to file an affidavit in reply.

The counsel Mr Hayhow objected to an affidavit being filed on the basis that there is no provision and in support of his argument he quoted the following cases to which Mr Paramanandam replied that they are simply not relevant.

The supporting affidavit has two pronged attack on the Defence filed by the Defendant based on the Statute and High Court Rules:

Section 62(2) of the Income Tax Cap. 201 states:-

*“Any taxpayer dissatisfied with an assessment may, personally or by his agent, within 60 days of the date upon which the notice of assessment has been served upon him or his agent or, where such notice has been posted, the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2 of the First Schedule stating the grounds on which he relies:*

*Provided that, where the assessment is an amended assessment the taxpayer shall have no further right of objection except to the extent to which, by reason of the amendment a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.”*

In support the counsel for the Commissioner cited **Ragg v CIR** C/A 7 (1953) **Argasam Finance v Oxbly** (1965) Ch 390.

In the light of the statutory provisions in Section 62(2) & 62(8) he relies strongly on the High Court Rules Order 18 rule 18 for the striking out of the Defence.

The Order 18 rule 18 provides that the Defence be struck out if he:-

- (1) it discloses no reasonable defence
- (2) its frivolous and vexations
- (3) there is abuse of process

The counsel for the Defendant is only denying liability to pay the tax as assessed on the basis that it is estimated figures. If it was the ground of appeal, he should have come within the stipulated time to put forward his argument. He did not do so. If he was short of time, he could have pleaded for further time. He did not do that either. The 3<sup>rd</sup> statement in (c) is closely related to the denial of allegations.

I quote below a passage from Denning L J. Judgment in Inland Revenue Commissioner v Pealberg [1953] 1 A E R Page 388 & 389

The Whole question to have tried in these proceedings in the High Court. The correct answer has been I think, given by the counsel for the crown namely that the right way for him to have raised any of these matters was by appeal to the Commissioners in the way provided by the Income Tax Acts, and, as he did not rise the matters by way of appeal, he is not allowed to raise them now. If we were to allow the taxpayer to raise these matters by way of appeal, he is not allowed to raise them now. If we were to allow the taxpayer to raise these matters it would mean that the High Court would become the Tribunal to decide questions of fact and law on tax assessment whereas they have been decided to the general satisfaction for a great many years now by the Commissioners of Income of Tax.” Later in his Judgment he said “If there has been no appeal to the Commissioners the debts become absolute and conclusive and the legal effect could be denied.” In Olive Ethel Ragg v Her Majesty the Queen a similar point was raised as in Pearlberg’s case. Hynes C J upholding that the objection to the assessment was out of time. “In our opinion the language is clear and unmistakable. Any person objecting to an assessment must give notice in writing to the Commissioner within the time determined for payment.” The taxpayer lost his appeal as he did not lodge his appeal within the stipulated time.

In the light of the decisions held in the foregoing cases I am not in a position to accede to the request of Mr Paramanandam to file an affidavit. Should I allow it, I am led to go against the statutory bar provided by Section 62 of the Income Tax Act which I have no right to do. Furthermore, the decisions are clear and the section is unequivocal in that it prohibits absolutely any challenge on the merits of the assessment made on the taxpayer,

It is also clear enough that any Defence to the Claim of the CIR is frivolous and vexatious and therefore Order 18 rule is applicable to strike out the Defence.

In resume I strike out the Defence and also disallow the application of Mr Paramanandam to file an affidavit. I enter Judgment for the Plaintiff in a sum of \$15,994.11 with costs to the Plaintiff taxed if not agreed.

**M JAYARATNE**  
**JUDGE**