

Porlo Taco Co Ltd v The Commissioner of Income Tax, SC 08 December 1975

Rejecting a tax return by the tax office without examining accounts and imposing requirements not required by law

Background/ Facts

Porlo Taco owns a fleet of 16 taxis which it operates in Port Louis. The Commissioner found the tax return of the company for the year of assessment 1966/67 was unsatisfactory on the basis that the books of account of the company was neither accurate nor adequate. The Commissioner consequently made an assessment increasing considerably the gross income declared. The company objected to the assessment which ended in an appeal which was settled out of court.

The Commissioner informed the company in writing that unless there was satisfactory improvement in the company's accounting and the company furnished acceptable audited accounts, he would in future increase his estimate of the company's gross income substantially. The Commissioner again found the company's returns for the years 1967/68 and 1968/69 unsatisfactory and accordingly made assessments.

Admission

It was admitted by counsel appearing for the Commissioner that the latter did not examine the company's accounts for the above two years but rejected them on the ground that they were no better than the one for the year 1966/67 and that they were not duly audited as requested by him.

Appeal

The point was whether the Commissioner was entitled without having examined the accounts for the years 1967/68 and 1968/69 to have rejected them and to proceed with the making of assessments. Authorities were cited that the Commissioner had no power arbitrarily to assess a taxpayer but must obtain materials on which to base his decision.

It was urged that the Commissioner had no right to discard accounts of any year just because he condemned previous accounts which he examined to be inaccurate or inadequate. It was mentioned that it was his duty to deal with each return separately upon the evidence in support thereof. It was contended in the particular case of the company which was a private company that the Commissioner's refusal to take notice of the accounts unless audited was unreasonable and without authority because the company was not by law bound as public companies, to have its accounts audited.

The law and its application

Whether the examination of a tax return may turn out to be a mere formality, the duty of the Commissioner is to go honestly and fairly through the process of seeking information upon which to found an assessment in each individual case. An assessment arrived at otherwise would be no assessment at all.

The law provides that where the Commissioner refuses to accept a tax return, he should to the best of his judgment determine the amount of the chargeable income and make an assessment. The taxpayer has the right to object to the assessment asking for a revision and the Commissioner may require the taxpayer to furnish particulars, books and documents and other evidence.

Conclusion

The Commissioner's assessments were quashed.