INCOME TAX

The recent Privy Council decision in *Mandavia* v. *Commissioner of Income Tax* [1959] A.C. 114, [1959] 2 W.L.R. 5, raises an interesting point which is directly applicable both to Singapore and to the Federation of Malaya. The case concerns the power of the Comptroller of Income Tax to raise assessments in default of returns. Section 59 of the East African Income Tax (Management) Act, 1952, is in substance the same as section 63(1) of the Income Tax Ordinance of Singapore. It reads as follows:

> " The Commissioner [in Singapore the Comptroller] may by notice in writing require any person to furnish him within a reasonable time *not being less than thirty days* from the date of service of such notice with a return of income..."

The words in italics are omitted in the Singapore Ordinance.

Section 71 of the East African Act is in substance the same as section 72(1) of the Singapore Ordinance and reads as follows:

> " The Commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return."

The same section in the Singapore Ordinance goes on to provide that where a person has delivered a return, the Comptroller may either accept the return and make an assessment based upon it or may refuse to accept the return and raise what is commonly known as an arbitrary assessment determining the amount of the chargeable income of the person to the best of his judgment. Section 72 of the East African Act corresponds to section 73 of the Singapore Ordinance and empowers the Comptroller in cases where it appears that any person liable to tax has either not been assessed at all or has been assessed at a lesser amount than that which ought to have been charged to raise additional assessments or original assessments as the case may be within the time prescribed.

The facts of *Mandavia's* case were as follows: on 26th May 1953, the appellant, a resident in Kenya, was for the first time served with a notice under section 59(1) of the Act of 1952 requiring him to furnish returns of his income for the years of assessment 1943 to 1953. The taxpayer was at that time in England and wrote to the Commissioner asking for an extension of time until he returned to Kenya towards the end of July. In those circumstances the Commissioner on or before 18th June, that is to say, less than thirty days after the service of the notice under section 59, made assessments on the appellant for the years 1943 to 1951, inclusive, relying upon his powers under section 72 of the Act on the basis of figures already submitted. The appellant contended that section 72 did not apply until the machinery under section 71 had been put into operation and that the assessments were therefore ultra vires and void in that they were made before the "time allowed" by section 71 (which was admittedly the thirty days provided by section 59(1)) had expired. The court of first instance in Kenya and the East African Court of Appeal both confirmed the assessments made and held that they were properly so made under section 72.

The argument for the appellant before the Judicial Committee of the Privy Council insofar as it related to the main part of the case was based on two alternatives, firstly, that section 72 could not apply until the machinery under section 71 had been put into operation and that the assessments were therefore ultra vires, and secondly, in the alternative that if these were wrong and if sections 71 and 72 were alternatives, the Commissioner having elected to give notice under sction 59 could not then operate section 72 during the currency of the "time allowed." The Commissioner relied on the general words of section 72 and maintained that they covered any case in which a person had not been assessed whether or not he had had a notice and had been allowed the prescribed thirty days. He conceded that it would be contrary to the scheme of the Act to operate section 72 in current cases since sections 59 and 71 were clearly intended to be the normal machinery, but he sought to argue that in cases where a year or more had elapsed following the year of income section 72 was properly available. Faced with the difficulty of laying down any time limit before which section 72 could not be invoked the East African Court of Appeal accepted the view that the two sections overlap over the whole period. On appeal however the Privy Council held that the respondent's contention would involve there being two concurrent jurisdictions, one providing reasonable protection for the taxpayer and the other providing no protection quoad the original assessment apart from a right to appeal, and therefore that such a construction appeared to be inconsistent with the general *and mandatory* provisions of section 71, which section the Privy Council held provided the machinery for the making of all original assessments. They therefore restricted the words "as to assessing for the first time" under section 72 to cases in which the machinery of section 59(1) having been operated no assessment has been

made because the return made for one reason or another disclosed no liability and therefore called for no assessment. The Privy Council further held that section 72 is concerned only with the re-opening of cases which had been settled under the normal procedure, and they relied for this finding on the fact that section 72 contains a limitation of time whereas section 71 does not.

It is unlikely that this decision will bring very much relief to the taxpayers of Singapore or the Federation of Malaya. It would seem that most of the arbitrary assessments which are in fact raised in Singapore are raised under section 73 being usually additional assessments which have been raised after returns and original assessments based on those returns have been made. It is, however, interesting to speculate on the effect of the omission from section 63(1) of the Singapore Ordinance of the minimum time for returns of thirty days. The printed form of notice used in Singapore provides for a period of twenty-one days, but it is not impossible to envisage circumstances, for example, where the Comptroller sends his notice by sea mail to a taxpayer known to be resident in the United Kingdom and where the resulting sequence of events might give rise to the application of the principle in *Mandavia's* case.

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