

JAMAICA

IN THE COURT OF APPEAL

REVENUE COURT CIVIL APPEAL # 43/86

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

BETWEEN	KARL EVANS BROWN	APPELLANT
AND	COMMISSIONER OF INCOME TAX	RESPONDENT

Mr. Enos Grant for appellant

Mr. William Alder for respondent

28th, 29th April & 19th June, 1987

CAREY, J.A.:

On 29th April, we dismissed this appeal with costs and intimated then that we would put the reasons for our decision in writing. We are now fulfilling that promise.

This is an interesting appeal on a point of construction and procedure which concerns a request for further and better particulars made by the appellant in respect of the Respondent's Statement of Case in an appeal before the Revenue Court. The appeal comes to this Court by reason of an order dated 28th July, 1986 by Orr J. (Ag.) in that Court refusing to allow the particulars.

The relevant procedural history is summarised in the following paragraphs:

On 22nd January, 1985 the tax-payer lodged in the Revenue Court an appeal, whereby he challenged a decision of the respondent in respect of

assessments made on him for years of assessment 1979, 1980, 1981, 1982 and 1983, and asked therein that the said assessments be modified, varied or discharged. In his grounds of appeal, as is required by Rule 8(b) of the Revenue Court Rules, 1972, the appellant stated the following allegations of fact on which he intended to rely:

"A. That the Appellant resides in Browns Town in the parish of Saint Ann and at all material times has been operating a Farm in the aforesaid Parish; that on the said Farm he cultivated cabbage, pumpkins, peas and beans and rears live-stock and chickens.

That from the year 1978 up to the year 1982 the Appellant also operated mini buses; that from or about 1977 he also operated a Grocery and Club at Browns Town aforesaid. That from or about 1983 he also operated a Bakery at Browns Town aforesaid; and that at all material times the Appellant has successfully engaged in gambling as a past-time."

The respondent in his Statement of Case pursuant to Rule 10(1) of the Revenue Court Rules 1972, set out the allegations of fact upon which he intended to rely. So far as is material, he averred:

- "(a) the Appellant is a farmer and a businessman and resides at Huntley in the Parish of St. Ann.
- (b) the Appellant did not submit (sic) returns for the relevant period, 1978 to 1983 - prior to the estimations made by the Respondent in 1984 - and the records disclose that he last returned income for Year of Assessment 1973 when he declared a chargeable income of \$542.00,
- (c) the Respondent's investigations revealed that the Appellant had acquired during the relevant period --
 - (1) real property of substantial value both in Jamaica and the United States;
 - (2) several expensive vehicles and derived income from several businesses: bakery, bar, restaurant and farming;"

It is necessary to quote from the Appellant's Reply so as to appreciate the issues which were raised as matters of fact upon the documents:

"1. The Appellant joins issue with the Respondent on his Statement of Case save in so far as same consists of admissions.

- "2. The Appellant denies that he had acquired during the relevant period real property of substantial value as alleged or at all.
3. The Appellant will say only 22½ acres of the 138 acre farm which he cultivates is owned by him.
4. Further the Appellant denies that during the relevant period he acquired several expensive vehicles as alleged or at all.
5. The Appellant will say he is the owner of a 1982 Honda Accord and part owner (with his wife) of a 1983 Isuzu, the Appellant will further say that during the relevant period the only vehicles he owned were trade vehicles, in particular a 1978 Ford 7000 Truck, 1980 Mazda van, 1978 Ford Transit van, 1983 Ford Pick-up Ranger, 1979 Chevrolet Van, that the Mercedes Benz and the Chevrolet Station Waggon mentioned in the Statement of Case were brought to Jamaica from the United States by the Appellant's brother and friend with a view to exchange them for land owned by the Appellant; that in or about August, 1984 the said two vehicles were seized by the Collector General and so the exchange was aborted."

The appellant wrote the respondent formally requesting particulars of certain allegations contained in the Statement of Case but was met by stony silence despite several reminders. He was constrained to apply to the Court for an order requiring the further and better particulars which were originally requested by letter. The particulars required were:

- "1. That the Respondent do serve on the Appellant within 14 days Further and Better Particulars in writing of the allegations made in Paragraph 2(a), and 2(c) of the Respondent's Statement of Case, stating specifically,
 - (a) As regards the allegation in paragraph 2(a) that the Appellant is a farmer and businessman, the nature of the farming and/or business activity which it is alleged that the Appellant was engaged in;
 - (b) As regards the investigations mentioned in paragraph 2(c) of the Statement of Case
 - (i) the time, date and place of the investigations,
 - (ii) whether the investigators dealt with the Appellant personally or his servant or agent,
 - (iii) if the investigators dealt with the Appellant's servant or agent, the name of the servant or agent.
 - (c) As regards the allegation in paragraph 2(c) (1) that the Appellant acquired real property of substantial

- "(c) value both in Jamaica and the United States, full details and value of all real property which it is alleged was acquired by the Appellant and the dates of acquisition.
- (d) As regards the allegation in Paragraph 2(c) (2) that the Appellant acquired several expensive vehicles full details and value of the vehicles which it is alleged were acquired by the Appellant and the dates of acquisition.
- (e) As regards the allegation that the Appellant was the owner of real property valued at a substantial sum, full details and value of the real property."

It was the appellant's prayer that if these further and better particulars were not supplied, then it should be ordered that the Statement of Case be struck out and the Appeal herein be allowed.

As I have already stated, the learned judge refused to order the required particulars and he delivered, in my view, a concise and a well reasoned judgment for that decision. It has been attacked on a number of grounds with which I must now deal. First, Mr. Grant argued that by virtue of Rule 40 of the Revenue Court Rules which he stated, incorporates the Supreme Court practice and procedure into the practice of the Revenue Court, the parties are in the same position as a plaintiff and a defendant in a civil action triable in the Supreme Court and the documents filed are pleadings. The fact, he maintained, that the Income Tax Act places on the appellant the onus of proving that the assessment is excessive, does not defeat the appellant's application for further and better particulars. Further, so the argument ran, the respondent had pleaded general facts, and particulars of those general facts should be allowed.

The rule which falls to be construed is Rule 40 of the Revenue Court Rules which provides as follows:

"40. Except as otherwise provided in the Act or in these Rules or in any enactment, the practice and procedure of the Supreme Court shall, so far as applicable, be followed."

It can be said that this rule makes the Civil Procedure Code applicable to proceedings in the Revenue Court to the extent that it is possible to do so, so long as no other enactment provides its own regime. The question, therefore, is, in the circumstances of this case, whether the Income Tax Act is excepted.

What I think it is relevant to consider in the first place, is the nature and scope of the proceedings in the Revenue Court. These proceedings constitute a rehearing by that Court of the decision by the Commissioner of Income Tax, in which the tax-payer alleges that an assessment is excessive. It follows that the scope of that review is governed or circumscribed by the scheme of the Income Tax Act, which provides for the review. Some of the provisions of the Act must be mentioned.

Section 76 of the Act permits any person who disputes an assessment, to appeal to the Revenue Court, where the onus of proving that the assessment is excessive, is placed on that aggrieved party who is called an 'objector'. Section 76(2) states:

"76.—(2) The onus of proving that the assessment complained of is excessive shall be on the objector."

Now an objector, before the state of an appeal has been reached, would have previously been assessed for income tax by the Commissioner, disputed that assessment and would have applied to have the decision reviewed and revised by the Commissioner. By virtue of section 75(5), the Commissioner would be entitled to require the tax-payer to furnish such particulars with respect to his income and to produce all books and documents relating to this income which he thinks necessary. Section 75(5) provides:-

"75(5) (a) On the receipt of the notice of objection referred to in subsection (4), the Commissioner may require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the income of the person assessed and to produce all books and other documents in his custody or under his control relating to such

"income, and may by notice summon any person who he thinks is able to give evidence respecting the assessment to attend before him and may examine such person on oath or otherwise.

(b) Any person who without lawful excuse refuses or neglects to attend or to give evidence in pursuance of a notice served on him under paragraph (a), or to produce any books or documents which he is required to produce under the said paragraph, or who refuses to answer any lawful question touching the matters under consideration, or who knowingly or wilfully gives any false evidence before the Commissioner, shall be guilty of an offence against this Act."

Section 67(1) of the Income Tax Act should also be noted. It is in the following form:

"67.—(1) Subject to the provisions of Part 1 of the Second Schedule, every person liable to pay income tax in respect of any year of assessment shall deliver, or cause to be delivered by his agent, to the Commissioner, or to the Collector or Assistant Collector of Taxes for the parish in which he resides, a true and correct return of the whole of his income from every source whatsoever for that year of assessment and shall, if absent from the Island, give the name and address of an agent residing in the Island."

The effect of these provisions is that a tax-payer is bound by law to make a full disclosure of all his income from all sources whatsoever. The Act places the burden of proving that the tax-payer is liable to pay on the Commissioner, but if the tax-payer has not filed a return, the Commissioner is authorised by Section 72(3) to make an assessment "according to the best of his judgment" [Section 72(3) provides]:

"72.(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to pay tax, he may, according to the best of his judgment, make an assessment upon such person of the amount at which he ought to be charged, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return."

Mr. Grant called our attention to Argosy Co. Ltd. (In Voluntary Liquidation) v. Commissioner of Inland Revenue [1971] 15 W.L.R. 502, which was an

appeal from the Court of Appeal of Guyana to the Privy Council and raised a question of the construction of a provision analogous to Section 72(3). Their Lordships held, as the headnote accurately reflects, that even though the onus was on the company to show that the assessment was excessive, the Commissioner must show the grounds on which he formed the opinion that the company was liable to pay tax before he could make an assessment to the best of his judgment. Certain observations of Lord Donovan who delivered the advice of the Board are pertinent to this appeal. At pages 504-505 the learned Law-Lord said this:

"Once a reasonable opinion that liability exists is formed there must necessarily be guess work at times as to the quantum of liability. A resident may be known to be living well above the standard which his declared income would support. The Commissioner must make some estimate, or guess, at the amount by which the person has understated his income. Or reliable information may reach the Commissioner that the books of account of some particular taxpayer have been falsified so as to reduce his tax. Again the Commissioner may have to make some guess of the extent of the reduction. Such estimates or guesses may still be to the best of the Commissioner's judgment--a phrase which their Lordships think simply means to the best of his judgment on the information available to him. The contrast is not between a guess and a more sophisticated estimate. It is between, on the one hand, an estimate or a guess honestly made on such materials as are available to the Commissioner, and on the other hand some spurious estimate or guess in which all elements of judgment are missing."

In my judgment, the matter stands thus: There are two distinct burdens of proof in an appeal to the Revenue Court. There is first, the burden on the appellant to show that the assessment is excessive. This onus is a heavy one because of his duty to make a full disclosure of all his income from whatever source. The burden on the Commissioner is the lighter one because in the vast majority of cases, the objector is not claiming that he is not liable to tax; he is challenging quantum. The burden on the Commissioner is evidential. It only arises or shifts to him when the tax-payer on whom the initial burden rests, leads evidence that he is not liable for any tax whatever. The Commissioner's Statement of

Case need, therefore, only show that the objector is liable to tax and the amount is assessed on the basis of material he has. Thus, to give two examples which are suggested in Argosy v. Commissioner of Inland Revenue (supra), the objector's acquisition of property which he has not returned or books he has not produced or which have been falsified, could constitute the material on which the Commissioner could rely, to show tax-payers prima facie liability to tax. Indeed, it appears to me that the Commissioner could have acquired his information from any source whatever. That material may be cogent or hearsay or evidence inadmissible in a Court of law.

It was suggested that the proceedings before the Revenue Court may be more akin to a trial than an appeal, say to this Court.

Evidence may be tendered viva voce or by affidavit (R. 24). The Court has power to draw inferences of fact (R. 30). Thus the procedure prescribed by the terms of these rules does, at first blush, assimilate the proceedings to a trial, and would seemingly approximate the appellant to the plaintiff and the respondent to a defendant. But that would be a profound misconception of the proceedings. An examination of the scheme of the Income Tax Act and in particular those provisions relating to an objection by a tax-payer make it abundantly clear, that the Act places the responsibility of inquiring into the income of a tax-payer upon the Commissioner. The Act proclaims that when the Commissioner has assessed the tax-payer to income tax after an objection, his assessment is final and conclusive [Section 74(7)]. I do not think those are idle words.

During the enquiry undertaken by the Commissioner, pursuant to Section 75(5), it is the tax-payer who must produce evidence, particulars if you will, of how his income is arrived at. Certainly, at that enquiry, it is not to be supposed that the Commissioner could be required to produce the material which he has in his possession. When the matter comes before the Revenue Court, it is the material which the Commissioner

has had before him which will form the material for the appellant's Notice of Appeal and the respondent's Statement of Case. At the hearing of the appeal, the parties are bound by the facts stated in the Notice of Appeal, Statement of Case or Reply. Rule 13 of the Revenue Court Rules enacts:

"13. Subject to Rule 12 it shall not be competent on the hearing of the Appeal, for the Appellant or the Respondent to rely upon any facts not set out in the Notice of Appeal, Statement of Case or Reply as the case may be."

If then the parties are bound to rely on the facts set out in their cases, I am quite unable to see how the question of "further and better particulars", can arise. I am driven to conclude that the proceedings before the Revenue Court are in no way similar to the trial of a civil action before a judge in the Supreme Court.

In the enquiry undertaken by the Commissioner, the tax-payer on whom the responsibility and duty of full disclosure rests, would either have disclosed fully or partially. On the basis of that disclosure, full or partial, the Commissioner would have made an assessment according to his best judgment. In a trial the situation is wholly dissimilar. That is an adversarial situation where there is no duty on either of the parties to make a full disclosure. On the one side, there are allegations and on the other, a traverse or other answer. The pleadings of the plaintiff might be so general as to prevent a proper defence being pleaded. He may, therefore, be required to condescend to particulars so that his opponent is not taken by surprise. No question of surprise can arise, at all events, so far as the tax-payer is concerned.

It should be clear that since it is the tax-payer who is required to make a full disclosure, particulars of allegations in the Commissioner's Statement of Case cannot be allowed, for that would be to reverse the roles of tax-payer and the Commissioner. That position is

not, in my judgment, sanctioned by the Income Tax Act. Rule 40 cannot thus be construed in the way contended for, by Mr. Grant. Accordingly, those provisions of the Civil Procedure Code which relate to a request for, and the supply of "further and better particulars" by parties to a civil action, have no application to proceedings under the Income Tax Act. This is enough, I think, to dispose of this appeal and I do not, therefore, find it necessary, to deal with other matters which were canvassed before us.

CAMPBELL J.A.

The appellant, being a person liable to pay income tax, failed to submit returns on the basis of which, he could be assessed to tax for the years of assessment 1978-1983 inclusive. He was accordingly assessed to tax on 23rd August, 1984 in respect of those years by the respondent in exercise of statutory powers given by section 72 (3) of the Income Tax Act (hereafter called the Act) the relevant part of which, is as hereunder:

"72 (3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to pay tax, he may, according to the best of his judgment, make an assessment upon such person of the amount at which he ought to be charged,"

The appellant, as he was entitled to do by section 75 (4) of the Act objected in writing to the assessment on 29th August and requested the respondent to review and revise the same as being excessive. The appellant undertook to submit his accounts and returns covering the relevant periods to substantiate his claim that the assessments were excessive. The appellant was given time within which to submit the said accounts and returns. The accounts and returns which he was required to submit are governed by section 67 (1) of the Act the relevant part of which is as hereunder:

"67 (1) Subject to the provisions of part 1 of the second schedule, (not applicable) every person liable to pay income tax in respect of any year of assessment shall deliver or cause to be delivered by his agent, to the Commissioner a true and correct return of the whole of his income from every source whatsoever for that year of assessment" (emphasis mine)

The appellant on or about October 8, 1984 submitted returns and accounts for the relevant periods but without supporting documents. Before us Mr. Grant stated that these accounts were capital statements. The appellant was requested by the respondent to supply proof of the transactions in the capital statements and in addition to complete a Certificate of Full Disclosure" presumably impliedly authorised by the wording of section 67 (1) above.

A meeting was convened between the appellant and the respondent on October 18, 1984 at which certain oral disclosures were apparently made by the appellant. These in the view of the respondent, were inadequate to make the returns acceptable. Supporting documentation was still not forthcoming. Subsequently, on December 5, 1984 the appellant by letter admitted that he could not provide proof of the income which he had returned. He took the unusual step of expressing his willingness to pay tax on 3 or 4 times the respective assessable incomes which he had returned plus "a moderate surcharge."

The respondent though still dissatisfied with the appellant's returns, nevertheless revised downward the assessments though not to the level of the appellant's offer. The aggregate of the chargeable incomes for the 6 years in question was reduced from \$4,767,724.00 to \$4,043,805.00 and a revised aggregate tax of \$2,440,503.88 imposed, which with penalty as disclosed in the record, amounts to \$3,660,755.81. The revised assessments were confirmed by decision taken by the respondent on December 21, 1984 under section 75 (6) of the Act which reads thus:

"75 (6) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly. In any other event the Commissioner shall give notice in writing to the person of his decision in respect of the objection."

The appellant appealed the respondent's decision, as he is entitled to do, under section 76 (1) of the Act which in parts read thus:

"76 (1) Any person (hereafter in this act referred to as the 'objector') who has disputed his assessment by notice of objection under section 75, and who is dissatisfied with the decision of the Commissioner therein, may appeal to the Revenue Court

(2) The onus of proving that the assessment complained of is excessive shall be on the objector.

(2a) An appeal shall be limited to the grounds stated in the notice of objection but the Revenue Court may in its discretion permit the grounds of appeal to be amended."

The appellant's grounds of appeal are, that based on the activities in which he said he was engaged over the relevant period, the assessments are unrealistic, arbitrary, unlawful and not in keeping with provisions of the Income Tax Act.

The respondent in compliance with Rule 10 of the Revenue Court Rules filed a "Statement of Case" setting out in paragraph 2 thereof the principal facts and events on which the assessments, as revised, were made and on which reliance would be placed at the trial. Thereafter the appellant's grounds of appeal were traversed in these terms:

"3. And further take notice that with respect to the grounds of appeal, save as hereinbefore admitted, the Respondent denies each and every allegation therein and refutes each and every contention therein."

The appellant in a reply authorised by the Revenue Court Rules controverted parts of paragraph 2 (c) of the "Statement of Case" which averred that the respondent's investigations revealed that the appellant had acquired during the relevant period, real property of substantial value both in Jamaica and the United States, also several expensive vehicles.

The appellant thereafter applied by Summons in the Revenue Court for further and better particulars of paragraph 2 of the respondent's Statement of Case. These were refused by Orr J., (Ag.). Against his decision, this appeal has been brought.

The substance of Mr. Grant's submissions before us, as similarly they were before the learned judge in the Revenue Court, is that Rule 40 of the Revenue Court Rules impliedly incorporates the practice and procedure of the Supreme Court in appeal proceedings in the Revenue Court. This being so, the appellant is to be regarded as a plaintiff and the respondent as a defendant. The appeal, Statement of Case and Reply are to be regarded as pleadings in relation to which the appellant as plaintiff and the respondent as defendant may each properly secure an order for further and better particulars under the practice and procedure of the Supreme Court in justifiable cases. Since he submitted, the respondent's Statement of Case considered

as a pleading in answer to the appellant's grounds of appeal manifests a traverse in the nature of a negative pregnant setting up an affirmative case, further and better particulars of this affirmative case ought to be given because the pleading lacked sufficiency of particulars to enable the appellant to know the case which he would have to meet at the hearing of the appeal. Further, he said, the mere fact that Section 76 (2) of the Act placed the onus of proof that the assessments were excessive on the appellant, did not by itself displace the obligation to give, in justifiable cases, further and better particulars of pleadings. The learned judge he said, was thus in error in failing to make the order for further and better particulars based on the opinion that such order could not be made, due to the onus of proof being on the appellant. Rule 40 of the Revenue Court Rules states as follows:

"40. Except as otherwise provided in the Act or in these Rules or in any enactment, the practice and procedure of the Supreme Court shall so far as applicable be followed."

Mr. Alder on the other hand submitted that Rule 40 of the Revenue Court Rules specifically exempted enactments which provide their own procedure. The Income Tax Act is one such enactment because it provides its own procedure for dealing with claims that assessments are excessive. Thus, he said, section 75 (4) provides for a tax-payer who is aggrieved by an assessment to object to the assessment and to ask the Commissioner to review and revise the same. Section 75 (5) provides that the Commissioner on receipt of the objection, may order the production of a return of income (if that has not already been done) relative to the income of the year of assessment which is the subject of the objection. The said subsection further authorises the Commissioner to requisition such particulars in relation to the return of income, the production of such books and other documents relative to the aforesaid return of income and to summon persons whom he thinks can give relevant evidence touching the same. The inference which Mr. Alder invites

us to draw from these provisions is, that commencing with the objection to the assessment, the onus is on the tax-payer as an objector to establish his case that either voluntarily or pursuant to requisition by the Commissioner he ^{has} fully complied with section 67 of the Act and has given all necessary particulars, and produced all necessary documents in support of the return of income.

In my view, there is nothing in the review procedure prescribed in Section 75 of the Act which can be likened to civil proceedings. In the review, the respondent cannot be equated to a defendant. The tax-payer could perhaps be likened to a plaintiff in the sense that he is complaining of a wrong done to him by the respondent but the latter from beginning to end is an investigator in an inquiry with wide investigative powers given by the Act to ascertain whether the tax-payer has vindicated his grievance of excessive assessment. The taxpayer succeeds only by establishing that he has made the fullest disclosures, from which it becomes manifest that the assessment is truly excessive. The respondent is not required at any time whatsoever to disclose any fact showing how he arrived at the assessment. If the respondent is satisfied, having regard to the particulars supplied to him by the tax-payer, the documents tendered, and any oral evidence given, that the chargeable income ought to be in a certain sum which is less than his own figure, he reduces his assessment but without ever having to disclose the basis on which he had computed the chargeable income. This being in my view the position in the inquiry preceding the appeal to the Revenue Court, it is difficult to understand by what magic a metamorphosis arises in the respondent's status such that he is transformed from an investigator to a defendant who can be ordered to give particulars.

It is my view that while Rule 40 of the Revenue Court Rules do not exempt from its provisions the Income Tax Act in its entirety, it certainly exempts it in relation to the adjudication of objection to assessments by a tax-payer because the Act provides its own procedure. To apply Rule 40, would result in transforming a procedure which is essentially an inquiry into a civil proceeding. Before the Revenue Court, the respondent does not

become a defendant, nor is he to be deemed a defendant because he complied with a Rule of the Revenue Court requiring the filing of a Statement of Case. Doubtlessly, Rule 40 could be invoked to incorporate the practice and procedure of the Supreme Court to secure for example a substitution for the objector in the event of his death, or to secure the production by the respondent of documents filed by the objector with the respondent relevant to his case, but certainly the Rule cannot be invoked to impose obligations on the respondent which in effect would be requiring him to defend his assessment contrary to the scheme of the Act as revealed by Section 75 of the Act.

In my opinion the learned judge was entirely correct in refusing the order on the ground that the particulars requested were not consistent with the scheme of the Income Tax Act and the Revenue Court Rules because of the heavy onus on the applicant as appellant to prove that the assessment was excessive. I interpret the learned judge as saying in effect that Rule 40 could not in the circumstances of the particular case be invoked and I am entirely in agreement with him.

For this reason I concurred in the decision of the Court on April 29, 1987 dismissing the appeal and confirming the order of the court below. I find it unnecessary to express any opinion on the other grounds of appeal on which submissions were made.

DOWNER J.A. (AG.)

The issue to be determined in this Interlocutory appeal from the order of Orr J. (Ag.) in the Revenue Court is whether the decision of the learned judge was correct in refusing the taxpayer's request for further and better particulars to supplement the Commissioner's of Income Tax Statement of Case. In determining this procedural matter, important matters of substance are raised. Mr. Grant for the tax-payer contended with great force and learning that proceedings in the Revenue Court though in the form of an appeal are in substance an ordinary civil trial. Mr. Alder on the other hand, submitted that as the assessment of the tax-payer was initially determined before the Commissioner of Income Tax by inquisitorial procedures, in the Revenue Court, the Commissioner was not a defendant, with an obligation to supply further and better particulars, but a respondent on appeal concerned to show, if the need arose, that his assessment was in accordance with the Income Tax Act.

The critical rule to be construed in this case is paragraph 40 of the Revenue Court Rules 1972 Proclamations, Rules and Regulations Jamaica Gazette Supplement dated September 22, 1972 which reads as follows:

"Except as otherwise provided in the Act or in these Rules or in any enactment, the practice and procedure of the Supreme Court shall so far as applicable be followed."

It is well recognized that procedural rules must be interpreted against the background of substantive law. The Act adverted to in this rule must be the Judicature (Revenue Court) Act 1971 and sections 3 and 4 of that Act read as follows:

"3 (1) There is hereby established a court, to be styled the Revenue Court, which shall have such jurisdiction and powers as may be conferred upon it by this Act or by any other law.

(2) The Revenue Court shall be a superior court of record and shall have an official seal which shall be judicially noticed.

"4 (1) The Revenue Court shall have jurisdiction to hear and determine any appeal, cause or matter brought to the Court under or pursuant to any of the enactments for the time being specified in the Schedule.

(2) The Court shall exercise all such functions as may be necessary or incidental to the jurisdiction vested in it by subsection (1)."

As the Revenue Court is a Superior Court of Record, it is empowered to make rules governing its procedure where there is no specific rule or law on the matter. All that Rule 40 ordains therefore, is that if there be no practice and procedure governing an issue, then before resorting to its inherent powers of a Superior Court of record to make its own rules, the Supreme Court practice and procedure should be applied so far as applicable.

The enactment which governs the procedure in this case is the Income Tax Act and the Commissioner relied on its provisions in her Statement of Case. Here is how she puts it:

REASONS

(1) The Appellant failed to deliver to the Respondent true and correct returns of the whole of his income from every source whatsoever. The Respondent was therefore justified in the light of Sections 67 and 72 of the Income Tax in confirming the Appellant's chargeable income for the Years of Assessment 1978 - 1983 as set out in paragraph 1.

(2) The Assessments raised on the Appellant became final and conclusive by virtue of section 75 (3) (c) of the Income Tax Act when the appellant failed to substantiate by documentary proof the returns made as requested by the Respondent.

It will become clear when the above sections are examined that they create a special procedure for the circumstances of this case and that there need be no recourse to the practice and procedure of the Supreme Court. Section 67 (1) reads:

<u>"Year of Assessment</u>	<u>Chargeable Income</u>
	\$
1978	49,950.00
1979	41,563.00
1980	32,272.00
1981	22,658.00
1982	31,320.00
1983	22,086.00

At this stage, the taxpayer was instructed that he should supply proof of all transactions and a complete Certificate of Full Disclosure.

With regard to assessments, it is helpful to have recourse to section 72 of the Income Tax Act to understand the extent of the Commissioner's powers. The relevant sections read:

"72 (1) The Commissioner shall proceed to assess every person liable to the payment of tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return.

Provided that where the whole amount of tax remaining unpaid is the subject of a deemed assessment under subsection (5) of section 67 it shall not be necessary to make an actual assessment.

(2) Where a person has delivered a return the Commissioner may -

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and, to the best of his judgment, make an assessment upon that person of the amount at which he ought to be charged."

Further the concluding part of subsection 4 reads:

"Provided further that any person who disputes such assessment, additional assessment or surcharge, may appeal to the Revenue Court in the same manner as an appeal may be made against an assessment."

The tax-payer did not duly deliver a return, and when he did, it was unacceptable. In the event, the Commissioner made an assessment according to her best judgment. A passage from the speech of Viscount Simon In Gamini Bus Co., Ltd., vs. Commissioner of Income Tax Colombo (1952) A.C.

"67 (1) Subject to the provisions of Part 1 of the Second Schedule, every person liable to pay income tax in respect of any year of assessment shall deliver, or cause to be delivered by his agent, to the Commissioner, or to the Collector or Assistant Collector of Taxes for the parish in which he resides, a true and correct return of the whole of his income from every source whatsoever for that year of assessment and shall, if absent from the Island, give the name and address of an agent residing in the Island."

This provision is reinforced by the criminal sanction in 67 (8) which reads as follows:

"67 (8) Any person who wilfully fails to comply with the provisions of this section shall be guilty of an offence against this Act and if the failure continues he shall, at the expiration of each period of thirty days, be guilty of a further offence against this Act."

The Commissioner's case is that from her interrogations and investigations, she had information that the tax-payer has real property of substantial value both in Jamaica and the United States and several expensive vehicles and income from several businesses such as a bakery, bar, restaurant. In addition to all these, he was a farmer. On the basis of her statutory powers, the Commissioner on 24th of August, 1984 made the following assessments for 1978-1983:

<u>"Year of Assessment</u>	<u>Chargeable Income</u>	<u>Tax and Penalty</u>
	\$	\$
1978	288,176.00	331,936.20
1979	387,984.00	451,465.80
1980	518,062.00	440,093.47
1981	691,500.00	589,683.75
1982	905,750.00	774,324.37
1983	1,252,333.00	1,073,252.22

After considerable correspondence between the tax-payer's Accountant's and the Commissioner, the tax-payer submitted the following returns:

571 at 577 is helpful to show how the courts have interpreted her powers pursuant to section 72 (2) (b) of the Income Tax Act. Although it was a case from Ceylon the statutory provisions are similar to ours and Viscount Simon's advice reads:

"The assessor did not accept the returns made by the appellant company and estimated the amount of assessable income of the appellant company in each of the four years at substantially larger sums. He was, of course, perfectly entitled to do this according to the best of his judgment, and it was not necessary for him to give his reasons for rejecting the appellant's returns or for arriving at his own estimates."

Implicit in the advice of Viscount Simon is that there is no need to give further and better particulars when the Commissioner exercises her best judgment. The taxpayer however has a right of appeal, but the onus is on him to prove that the assessment was excessive. To determine the nature of that appeal we must refer to sections 76 (1) and (2). These subsections read:

"76 (1) Any person (hereafter in this Act referred to as the 'objector') who has disputed his assessment by notice of objection under section 75, and who is dissatisfied with the decision of the Commissioner therein, may appeal to the Revenue Court within thirty days of the date of receiving the Commissioner's decision referred to in subsection (6) of section 75 or within such longer period as may be permitted by or pursuant to rules of court.

(2) The onus of proving that the assessment complained of is excessive shall be on the objector.

Since the appeal is by way of rehearing it is important to examine the initial proceedings before the Commissioner as the procedures there must govern the proceedings on appeal in the Revenue Court. The Commissioner noted the tax-payer's admissions, and by letter dated 26th November, 1984 advised the tax-payer that his returns were unacceptable as there was no supporting documentation. The Commissioner further stated that the tax-payer was asked to agree with the assessments, failing which, assessments would be made pursuant to section 75 (6) which states:

"75 (6) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly. In any other event the Commissioner shall give notice in writing to the person of his decision in respect of the objection."

The Commissioner's Statement of Case further averred that by letter dated 8th December, 1984 the tax-payer admitted that he could not provide proof of the income which he had returned and that he was willing to pay three or four times the amount he had returned as chargeable income plus a moderate surcharge. However, on 2nd December, 1984 the Commissioner confirmed her assessment for the years 1978-1983 as set out previously.

The statutory powers which enabled the Commissioner to contend that her assessment was final and conclusive and the procedures which she must follow are contained in section 75. The material parts are as follows:

"75 (1) The Commissioner shall cause to be served personally on, or sent by registered post to each person whose name appears on one of the assessment lists, a notice addressed to him at his usual place of abode or business, stating the amount at which he is assessed and the amount of tax payable by him, and informing him of his right under subsection (4).

(2) No assessment charge or other proceedings purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

(3) An assessment or the duty charged thereon shall not be impeached or affected -

(a) by reason of a mistake therein as to -

(i) the name or surname of a person liable; or

(ii) the description of any income; or

(iii) the amount of the tax charged; or

(b) by reason of any variance between the notice and the assessment:

"Provided that in cases of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

(4) If any person disputes the assessment (including any determination or other decision made by the Commissioner before the making of the assessment, and upon which it is based) he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of the service of the notice of assessment."

It is abundantly clear that the only particulars to which the tax-payer is entitled under the Income Tax Act is the particulars in the notice of assessment which must contain the substance and effect of the assessment. This assessment as previously explained was made pursuant to 72 (2) (b) of the Act and was on the basis that the taxpayer was a farmer and owned substantial property both in Jamaica and the United States of America. The cardinal features of the Income Tax Act are the obligation on the tax-payer to furnish particulars of his income to the tax-gatherer and the inquisitorial power of the tax-gatherer to require such particulars. There is no room for a reversal of roles. These powers are set out hereunder:

"75 (5) (a) On the receipt of the notice of objection referred to in sub-section (4), the Commissioner may require the person giving the notice of objection -

- (i) to deliver (if he has not already done so) within thirty days or such longer period as the Commissioner may permit, a return of income for the years of assessment which in the opinion of the Commissioner are affected by the notice of objection;
- (ii) to furnish within such period as the Commissioner may specify, such particulars as the Commissioner may deem necessary with respect to the income of the person assessed and to produce all books and other documents in his custody or under his control relating to such income.

"and may by notice summon any person who he thinks is able to give evidence respecting the assessment to attend before him and may examine such person on oath or otherwise.

(b)

(c) Where the person giving the notice of objection refuses or neglects to deliver any return or furnish any particulars or to produce any books or documents, as the case may be, required by the Commissioner under paragraph (a) within the period prescribed by or pursuant to that paragraph, the notice of objection served by such person shall cease to have effect and the assessment as made shall, subject to section 81, be final and conclusive for all purposes of this Act as regards such person."

The thrust of Mr. Grant's submissions ignores these statutory provisions and he submitted that the rules and authorities relating to further and better particulars in an ordinary Supreme Court action were applicable to this case. Consequently he relied on such authorities as Pinson v. Lloyds and National Provisional Foreign Bank Ltd., (1941) 2 All E.R. 636 and Inland Revenue Commissioner v. Jackson (1960) 3 All E.R. 31 which deal with the necessity for further and better particulars in instances where the defendant indicates that he intends to set up an affirmative case. This mode of procedure has no relevance in instances as this, where the special jurisdiction of the Revenue Court is exercised under the relevant sections of the Income Tax Act. Nor was the citation of Argosy Co. Ltd., (In Voluntary Liquidation) v. Commissioner of Inland Revenue (1971) 15 W.L.R. 802 helpful to the tax-payer.

In the Argosy case, Lord Donovan in the Privy Council held, that although the onus was on the company to show that the assessment was excessive, the Commissioner must show grounds on which he formed his opinion that the company was liable to tax, before he could make an assessment to the best of his judgment, and there was no evidence before him on which he could have formed such an opinion. Further, a strong prima facie case had been made out that the Commissioner had formed an opinion on liability which no reasonable person could have held and so the assessment was bad.

In this case, the Commissioner had formed an opinion about quantum and that he is entitled to do as is shown by the following observations of Lord Donovan on page 504 where he says:

"Once a reasonable opinion that liability exists is formed there must necessarily be guess work at times as to the quantum of liability. A resident may be known to be living well above the standard which his declared income would support. The Commissioner must take some estimate, or guess, at the amount by which the person has understated his income. Or reliable information may reach the Commissioner that books of account of some particular tax-payer have been falsified so as to reduce his tax. Again the Commissioner may have to make some guess of the extent of the reduction. Such estimates or guesses may still be to the best of the Commissioner's judgment - a phrase which their Lordships think simply means to the best of his judgment on the information available to him."

In the light of the Commissioner's powers to make an assessment to the best of her judgment coupled with the provisions that such an assessment may become final and conclusive, gives the tax-gatherer enormous powers to secure compliance against an errant tax-payer and such a situation is not to be found in ordinary civil proceedings. It was therefore almost ~~presumptuous~~ for the tax-payer to ask the Commissioner to reveal the nature of the tax-payer's farming, when and how the investigations into his taxable capacity took place and where his realty was situate in the United States. To accede to the tax-payer's request would be to rewrite the Income Tax Act under the guise of interpreting it. The request for the further and better particulars was rightly refused by Orr J., (acting) and this appeal was therefore dismissed with costs.