(1932) 10 AHC CK 0012

In the Allahabad High Court

In Re: Abhey Ram Chunni Lal

Date of Decision : 14-10-1932

Acts Referred:

Citation : (1932) 10 AHC CK 0012

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is an application made by a firm, Messrs. Abhey Ram Chunni Lal, requesting this Court to ask the Income Tax Commissioner to state a case. The application came up for hearing on 24th June. 1932 and we directed a notice to go. Incompliance with that notice the learned Government Advocate has appeared to show cause against the granting of the application. We have heard the learned Counsel for the parties, and as we are going to reject the application, it is not necessary to deliver a judgment in ex-tenso. Briefly, the learned Counsel for the assessee has raised four points. The facts involved are as follows: The assessee has his business at three places, namely, Benares, Jaunpur and Piparia in the Central Provinces. At Benares there are two shops, one is the head office, and the other is a branch office. On 1st April 1931 the Income Tax Officer of Benares called on the assessee to furnish a return by 4th May 1931. The assessee failed to furnish a return, and he asked for time. On 6th July 1931, he was definitely told that his return should be a complete one in the sense that it should cover the total income derived from not only the Benares offices but also from the offices at Jaunpur and Piparia. On 20th July 1931 the assessee filed a return which was in respect of the income derived from the two branches at Benares alone, and it did not contain any mention of the income from the Jaunpur and Piparia branches. On 21st July 1931, the Income Tax Officer at Benares pointed out this omission, and once more granted time up to 24th July 1931, to comply with the notice issued u/s 22(2). This was not done, but on 23rd July 1931, an application was filed raising a question of jurisdiction. On 28th July 1931, an assessment to the best of judgment was made.

2. The first question is whether the Income Tax Officer at Benares had jurisdiction to call for a return of the income at Jaunpur and Piparia branches. The point is really covered by an authority of this Court, namely, in the matter of In Re: Lachhman Prasad Babu Ram of Cawnpore, . We agree with that decision, to which one of us was a party, and we hold that the Benares officer had jurisdiction to call for a return of the income of all the branches ; that officer having jurisdiction at the head office at Benares, Section 64(4) does not militate against the view. It ha? been enacted only to safeguard the powers of the Local Officer, in case it might be contended that Sub-section (1), Section 64 took away that power.

3. The second point raised was that the return filed was a complete compliance with the provisions of Section 22(2), and if it was "incorrect or incomplete," proceedings should have been taken u/s 23(2) of the Act. We are of opinion that a return which deliberately failed to comply with the rule contained in Section 22(2), that the return was to be of the total income of the assessee was no return at all within the meaning of that rule of law. Section 23(4) permits the Income Tax Officer to make a best judgment assessment in the case there is a failure to comply with a return "under Sub-section (2), Section 22." The language does not stop with the words "fails to make a return," but the word "return is qualified by the words "under Sub-section (2), Section 22." In our opinion there is no contradiction or inconsistency between the provisions of Section 23(2) and Section 23(4). When the assessee has made a return which he knows is a bona fide return and in which he has put in his total income to the best of his then information, there might yet be some omission on his part due to some cause or other. In that and similar cases Section 23(2) would apply.

4. The next point is whether the assessee had enough time to comply with the order. In our opinion he had. The next point was that the old practice, namely, of demanding return at Pipaparia and Jaunpur, should have been continued. But this was a matter for the Income Tax Officer at the head-quarters to decide, and we have no voice in the matter. In the result the application fails and is hereby dismissed with costs. We assess the fee of the learned Government advocate at Rupees 150. He will file his certificate of fees within the time allowed by the rules of the Court.