

(1930) 12 AHC CK 0013
In the Allahabad High Court
In Re: Ganga Sagar of Khurja

Date of Decision : 08-12-1930

Acts Referred:

Citation : (1930) 12 AHC CK 0013

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—This is a reference by the Income Tax Commissioner u/s 66 (2), Income Tax Act, made at the instance of one Seth Gangasagar. The facts leading to this reference, briefly, are these: Seth Gangadas was directed to produce his books in respect of his income for the " previous year " which commenced in Diwali 1984 and went up to the Diwali of 1985. He produced his account books, but failed to produce the account book of the year 1981 to 1982. He also failed to produce the account books of a certain firm known as Jogiram Jadki Prasad. The Income Tax Officer, Mr. Drown, looked into the accounts submitted, calculated the income, allowed certain deductions, disallowed others and ultimately found that the total income which was taxable came to Rs. 7,00,000 odd. He calculated the Income Tax and the super-tax and declared that the net amount came to Rs. 96,933-12-0 Having said so, the learned officer made the following remark:

The assessment is wholly based on accounts but is made u/s 23 (4), Income Tax Act, for the assessee's failure to comply with all the terms of the notice u/s 22(4), in that the following accounts were deliberately withheld by the assessee, which according to general -reputation the Rai Bahadur has got and which he could produce....

2. The assessee Seth Gangasagar thereupon filed an application u/s 27, Income Tax Act, before the same learned officer. It was disallowed and then the assessee went up in appeal to the Assistant Commissioner of Income tax. The appeal was u/s 31, Income Tax Act. The appellate officer found that the assessee had really got in his possession the account books of the year 1981 to 1982 and had deliberately concealed them. As regards the other accounts books, he came to

the conclusion that they were not in the assessee's possession. Then he considered the question whether the account books of the year 1981 to 1982 were relevant to the enquiry or not. He remarked:

The third point raises the question whether the books of account for the year 1981 to 1982 could be relevant to the assessment for the year 1929 to 1930. I think this question is not very material. An Income Tax Officer acts within his powers when he calls for the books of account of an assessee for three years prior to the year under assessment, which he is authorized to do u/s 22 (4), Income Tax Act.

3. In the result, the appeal was dismissed. Thereupon Seth Gangasagar made an application to the Income Tax Commissioner, as already stated, to state a case for the consideration of the High Court. In the application, the assessee said:

The view of law taken by the Income Tax Officer and the Assistant Commissioner of Income Tax that the assessment should be made u/s 23, Clause 4, Income Tax Act, is incorrect, among others, for the following reasons....

4. We take it that the point of law that Seth Gangasagar wanted to raise was whether, in the circumstances of the case the assessment should be deemed to have been properly made u/s 23 (4) or whether it should have been treated as having been made u/s 23 (3) of the same Act.

5. The Commissioner of Income Tax thought that the petition of Seth Gangasagar did not raise any point of law at all and if any question did arise, it was the following, viz.:

Whether the findings of the Income Tax Officer and the Assistant Commissioner that the assessee could have produced the account books for the year 1981 to 1982, had he been so minded, were legally valid findings?

6. The question framed was a question of fact pure and simple and the High Court could not give any answer to such a question.

7. It has however been held in this Court in *Shiva Prasad Gupta Vs. Commissioner of Income Tax*, that when a case has been stated before the High Court by the Commissioner, the High Court can look into the facts and resettle the issues, as it were, and decide the issues of law that properly arose on the statement. The fact therefore that the Commissioner of Income Tax misunderstood the petition made before him and failed to formulate the only point of law that arose on the petition and on the decision of the Assistant Commissioner of Income Tax, does not preclude this Court from framing the issue of law that arose and to decide it. As stated above, the issue of law that arose in this case is as follows:

Whether in the circumstances of this case, the Income Tax Officer was right in calling his assessment an assessment u/s 23 (4) of the Act or whether in law the assessment was one u/s 23 (3) of the Act and whether in the latter case the

assessee had a right of appeal in the regular way?

8. Now we come to the facts of the case. It appears that Seth Gangasagar was in the habit of submitting a statement of his income. For some time, the Income Tax Officer accepted his statement, but later Seth Gangasagar discontinued submitting the statement of his income. When he was required to state his income in a later year, he submitted a statement which was found to have been false and materially concealed his income. He was prosecuted and convicted for concealment of his income and he was assessed to the best of judgment by the then Income Tax Officer for the year 1927 to 1928. In that year, i. e., during the assessment for the year 1927 to 1928 a controversy arose as to whether the account books of the year 1981 to 1982 were in the possession of the assessee or not. The assessee asserted that the books had been lost in transit between Bombay and Khurja, but his statement was not believed. This statement formed the subject matter of a criminal prosecution, but no charge was framed and no conviction was obtained. In the following year, namely 1928 to 1929, the assessee was again called upon to produce among other documents the account books for the year 1981 to 1982. He reasserted what he had stated before, that the books were not in his possession or power and that they had been lost. His statement was disbelieved, and for second time, an assessment to the best of the Income Tax Officer's judgment was made. We are now concerned with the third year, namely 1929 to 1930. In this year again, for the third time, the assessee has been asked to produce his account books of the year 1981 to 1982. The Sambat year 1981 to 1982 would correspond to the English year 1925 to 1926. The assessee again protested that his account books had been lost. This statement has again been disbelieved. The Income Tax Officer, as already stated based his assessment on the actual entries in the other books produced by the assessee and made his assessment. He did not believe that there was any extra income on which the assessee should have been assessed and that such income could have been discovered by the production of the books of the year 1981 to 1982. We have already quoted from the order of the Income Tax Officer. He said that this assessment was wholly based on accounts. But he thought that because the assessee had failed to produce the books for the year 1981 to 1982 the assessment should be treated as one u/s 23 (4), Income Tax Act.

9. The assessee's contention is that the books which were not forthcoming, namely of the year 1981 to 1982 were not required for the purposes of assessment and he should not have been called upon to produce them and that in any case, his statement- that the books were lost, should have been believed. We are not in a position to say whether the books are actually in the possession of the assessee or whether they are lost, but we think that there is a good deal of strength in the contention that the books for the year 1981 to 1982 were not "required" within the meaning of Section 22 (4), Income Tax Act. An Income Tax Officer is entitled to call for documents which in his opinion would furnish him with relevant material for assessment of tax. Sub-section 4, Section 22 runs as follows;

The Income Tax Officer may serve....on any person upon whom a notice has been served under Sub-section 2, a notice requiring him to produce . . . such accounts or documents as the Income Tax Officer may require.

10. The word " require " really means require as a piece of relevant evidence. The word " require " does not mean that the Income Tax Officer should ask for documents or account books which he does not think to be relevant at all. We have more than once pointed out the fact that the actual assessment was made on the account books which were actually produced before the Income Tax Officer. He did not say in his order that he guessed that any profit had been concealed by putting away the account books of the year 1981 to 1982. For the purposes of assessment therefore, the books of the year 1981 to 1982 are not "required." In the circumstances, the question arises whether the assessment is really under Sub-section 4, Section 23 or it is really u/s 23, Sub-section 3.

11. If we look to the principle on which the two subsections of Section 23 are based, we shall at once see why the two rules are different. Where the Income Tax Officer does not get proper material on which to find out the true income of an assessee, it is in the interest of the estate to guess the income of the assessee. The assessee cannot complain that he has been over-taxed, if owing to his own failure, the Income Tax Officer is not able to do justice towards him. It is the assessee who is in default and he has no right to complain. But where the proper materials are before the Income Tax Officer, he would utilize them and make assessment u/s 23 (3), which assessment would be liable to be re-examined by the appellate officer. When an assessment is made by the Income Tax Officer more or less on matters which have been guessed out, there cannot be any proper appeal to an appellate Court. The Income Tax Officer does very often possess extraneous information as to the income of a man and if he thinks that the assessee's proper income is at a certain figure, it is but right that his judgment should be final and there should be no appeal. There would be no sense in substituting the Income Tax Officer's " guess " by his superior Officer's " guess." It is on this principle that an appeal is shut out in the case of what has been called best judgment assessment." It is true that all these reasons are not to be found within the four corners of the Income Tax Act, but one can easily see the reason for the rule.

12. If we are right in thinking that this is the principle on which the two rules, namely Sub-section 3 and Sub-section 4, Section 23, are framed, we can have no hesitation in coming to the conclusion that the assessment made in this particular case should not have been declared to have been an assessment u/s 23 (4), It should have been treated as an assessment u/s 23 (3). This therefore is our answer to the question which we have ourselves formulated.

13. As the applicant has succeeded entirely, we direct that he shall get his costs from the Government. We assess the fees payable to the learned Counsel at Rs. 200. Let a copy of this judgment, under the seal of the Court be sent to the Commissioner of Income Tax. The Government Advocate is allowed a month's

time within which to file a certificate of payment to him.