

(1924) 07 AHC CK 0085
In the Allahabad High Court
Case No : Misc. Case No. 245 of 1924
In Re: Lachhman Das Narain Das

Date of Decision : 28-07-1924

Acts Referred:

Citation : (1924) 07 AHC CK 0085

Final Decision : Dismissed

Judgement

Walsh, Acg., CJ.

1. We accept the statement of the income tax Officer as being really the statement of the case on which our opinion is invited. He tells us that he was not satisfied within the meaning of sub-section (1) section 23 with the assessee's return, and that he therefore issued a notice to them under subsection (2) and fixed the date for the hearing, fully appreciating that it was a judicial proceeding in which he could summon independent evidence if he wanted it, or obtain information for himself from such materials as the assessee chose to produce on the appointed day. The assessee and their representatives attended with their books and the income tax Officer told them that the wastage which they were claiming to deduct from their gross returns was more than it ought to be, and more than it was in their other mill, or in previous years in this mill. It is obvious that if a person has once already been assessed in respect of the profits of a particular business, and the profits suddenly show a decrease resulting from the same bulk of material, something has happened to create a diminution of the profits; in that respect the onus is upon the assessee not as a matter of law, but as a matter of practice and common sense. If a man is receiving so much a year rental from house property, and he returns a smaller amount and explains the falling off by the fact that three houses have been burnt down and therefore could not be let to any tenant, the income tax Officer would naturally require him to satisfy him of that fact. The income tax Officer therefore rightly called upon the assessee for an explanation of this unusual wastage. He summoned nobody as a witness and examined nobody, either secretly or openly, who was not tendered on behalf of the assessee, and no suggestion that he had done so was put to him when he appeared before us. The assessee's first answer when asked

for their explanation was that in this mill the material was of inferior quality. The income tax Officer refused to accept this, giving as his reason that he knew from the evidence of their books that they bought in bulk material of the same quality for both mills, and on that (to quote his exact words) "they kept quiet," which, as a question of fact, justifies the inference that they were not prepared to dispute the statement which he had made. He thereupon assessed them, disallowing what one "may call the excess or abnormal or unusual wastage which their return for that year had put forward. An appeal was brought and they objected before the appellate court that they had no proper opportunity of proving the percentage of wastage which they claimed. That was rather an exaggerated way of stating what had happened in the Court below; but the Assistant Commissioner of income tax, regarding the assessee as entitled to ordinary justice and the full hearing, which every litigant has a right to, sent the case back to the income tax Officer" to give the assessee the further opportunity which they desired. What precise opportunity they had been deprived of does not appear, but in fact a re-hearing took place before the income tax Officer. On that occasion they produced oral evidence including an expert,..... on whom they greatly relied, and generally directed their evidence, as they were entitled to do, to showing that in this mill wastage was high and the percentage claimed was instified. The income tax Officer, knowing that in their other mill they kept a daily stock book by which the wastage could be roughly checked, although owing to the moderation of their claim on that mill he had never to check it from this stock book, asked orally, without issuing any notice, for their daily stock book. Here again he threw the onus on to them, and they accepted it, by agreeing that they did keep daily records (which the majority of manufacturers enter in stock books) but that these had been kept on sheets and destroyed, and all that could be then produced was a book, or books, which contained a general total at the end of the year, or of some other period. In the view of the income tax Officer, both at the first hearing and at the second hearing after he had been directed by his superior officer to give the assessee a further and better opportunity, they had failed to explain what was the cause of this, excessive and abnormal waste. He is the sole judge of fact subject to appeal. Whether he is right or wrong has nothing to do with us. His duty was to take into account the claim, the nature of the evidence by which the assessee sought to establish that claim, which he evidently thought, as he was entitled to do, extremely shadowy, and also to take into account the failure of the expert.....and other witnesses to explain this abnormality without self-contradiction, and thinking possibly that if an expert like.....cannot explain a phenomenon nobody can, and that if an expert breaks down it makes things worse than if he had never been called at all, and that this phenomenon was a new phenomenon in this particular year in this particular mill, and that it did not exist in the other mill of the assessee; weighing all these various facts in the scale, he came to the conclusion that the fair thing to do was to assess them at the figure which he ultimately decided. He did not in fact require them by any notice in writing to produce further evidence on specified points and he did not in fact regard them as being in default so as to enable him

to work sub-section (4) , and he assessed them, after weighing all the evidence direct and indirect, u/s 23(3) . The above statement of facts though importing, as it necessarily must, the adverse view which the income tax Officer took of the assessee's returns and his conduct and his evidence, sets out accurately and impartially the precise position when the case reached ultimately the income tax Commissioner. The result of such statement is to show that when the case reached the income tax Commissioner there was no objection in law which the assessee could legitimately raise, either by way of omission or commission on the part of the income tax Officer, in the proceedings taken by him for ascertaining in fact the fair assessment for which the assessee was liable. I therefore note, as I began, that there is no question of law arising in this case. The application must be dismissed and the assessment must stand, and the assessee must pay the costs of these proceedings. For my own part I have no doubt, and I am confirmed by my examination of the other provisions of the Act, that the other evidence which the income tax Officer may require on specified points, under sub-section 3 of section 23, is evidence which he may require from the assessee and of which he may give him notice, specifying the points and requiring its production. It seems to me that this interpretation enables the machinery to work smoothly and naturally, and any other interpretation works difficulty. There is no doubt that the enquiry contemplated by section 23 is an enquiry such as that which the appellate court u/s 31 may direct the income tax Officer to hold, or may himself make during the hearing of the appeal. It is deemed to be a judicial proceeding, and the income tax Officer has the same power as a court under the CPC when trying a suit to enforce the attendance of any person and to compel him to give evidence on oath, to compel the production of witnesses and of documents, and to examine witnesses on commission. So that he has all the powers of a Judge in a suit, so far as concern witnesses and documents. This gives him ample facilities for securing information and guidance from rivals in the trade of the assessee, or experts, or past employees, or managers, acquainted either with the particular business of the assessee, or the class of business in the neighbourhood-and no further provision is required in any other part of the Act to vest that power in him. Section 37 is comprehensive and adequate. If sub-section 3 of section 23 gave power to the income tax Officer to summon further evidence himself it would be tautologous. It would be merely repeating, in unconvincing and inadequate form, what is, expressly provided by section 37. In my view the matter is simple and clear. When the day is appointed, and the notice requiring the assessee to attend and produce evidence and so forth at the enquiry has been complied with, up to that point, there has been no default under sub-section (2) . If the assessee makes default under sub-section (2) by failing to attend or failing to produce evidence, then undoubtedly the income tax Officer may, and indeed has no option but to, do his best under sub-section (4) . But in this imperfect world especially with business difficult to understand for any one who has not been specially trained, occasions must often arise when the evidence produced before a tribunal falls short of giving the income tax Officer full and complete satisfaction. In this case,

for example, the assessee might have said "the wastage is abnormal. I admit it. The fact is that our machinery is worn out. It has given great trouble this year, and partly on that account the wastage has been excessive and our profits much diminished." The obvious course for the income tax Officer would be to say "I was not aware of that, and if you satisfy me on that point I shall be prepared to accept your claim of wastage, but before I do that I require you to produce further evidence about the machinery". He may then adjourn the enquiry, fix a fresh date, and in order to prevent mistake require by a fresh notice the assessee to produce other evidence on the specified point, namely on the defect which had appeared in the machinery, on such adjourned date. As my brother pointed out during the argument, sub-section (2) does not confine the income tax Officer to one notice, and such further notice if given would become a notice under subsection (2) . The evidence, if produced, would be other evidence such as the income tax Officer has required on specified points, and having obtained it he can then assess under sub-section (3) . If the assessee chooses not to produce further evidence on those specified points, then the income tax Officer is thrown back on to sub-section (4) , just as he is if the assessee has failed to produce any evidence in the first instance, and this view, which seems to me to work, as I have already said, quite easily and to do justice to all parties, derives confirmation from the fact that an order under sub-section (4) of section 23 is unappealable; in other words, an assessee who is so obstinate, or fraudulent, that he will not assist the income tax Officer by removing these difficulties and tendering further evidence on specified points, is not only penalised at possibly a figure higher than the true figure, but is also deprived of the right of appeal, which is given to those who try their best even though the tribunal does not accept their views. However, these observations do not really arise, inasmuch as in our view no question of law on the facts stated is open for us to decide.

Dalal J.

2. In my opinion no question of law arises in this case, and we are not required to pronounce any decision u/s 66. The income tax Officer made an assessment u/s 23(3) of the income tax Act. Both the applicant and the income tax Commissioner have submitted statements to this court. They appear to be labouring under the mistake of reading this clause of section 23 dissociated with the rest of the Act. The applicant desires us to hold that the income tax Officer could hear evidence only of witnesses produced by him, while the income tax Commissioner expresses alarm in case this Court held that by the word "require" in this clause is meant "require from the assessee." The Commissioner enquires how a fair assessment is to be made if the income tax Officer is confined to hear evidence produced by the assessee only and not any other evidence. This clause however is to be read with the rest of the Act, and it does not take away the power of the income tax Officer to call for and hear evidence under the powers he has u/s 37 of the Act. The only difference between clause (3) and clause (4) is that in cases falling under clause (3) he is to arrive at an assessment to the best of his judgment on the evidence before him, while under

clause (4) he is to decide in the absence of evidence. We have examined the income tax Officer and read his judgment and the judgment of the income tax Commissioner. Both officers have arrived at a finding on proper and legal evidence, and it cannot be said that those findings are based on mere conjectures without any evidence to support them. Under the circumstances there is no question of law before the Court. I agree with the order proposed by his Lordship.