

(1930) 05 AHC CK 0003
In the Allahabad High Court
In Re: Radhey Lal and Others

Date of Decision : 16-05-1930

Acts Referred:

Citation : (1930) 05 AHC CK 0003

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—This matter has arisen out of an application made to this Court by three assesseees asking this Court to call upon the Commissioner of Income Tax, United Provinces, to state a case, he having refused to state one when applied to for the purpose by the applicants. The Commissioner of Income Tax has now stated a case and we have to see what are the questions of law that arise for determination by this Court.

2. The learned Government Advocate has placed before us an unreported judgment of a Pull Bench of the Madras High Court delivered on 20th January 1930 [Since reported in S.A. Subbiah Iyer Vs. Commissioner of Income Tax, as an authority for the proposition that the High Court would not consider any point of law that was not raised either before the appellate officer or the Commissioner himself by the assesseees. We have no reason to differ from what was laid down in that case and we think it but right that only such points of law should be considered by the High Court as were already before the officers of the Income Tax Department.

3. To find out what are the real points of law that arise in this case the following facts have to be stated: One Bankey Lal had several sons. We are concerned with only two, namely, Radhey Lal and Balmukand. Radhey Lal's son is Shyam Lal. There were three persons who were assessed with Income Tax in the year previous to the year in question: (1) Balmukand, (2) Radhey Lal Shyam Lal and (3) Balmukand Sarraf. They were assessed separately to Income Tax. In the year in question, that is to say, in the year 1928-29 three separate notices were issued on 1st April 1928, to the three persons aforesaid. u/s 22 (2), Income Tax Act, calling on them to make a return of their respective incomes. They

submitted returns and they also produced their account books as desired by the taxing officer. The taxing officer thereupon proceeded to assess them with Income Tax. He however at some stage or other made up his mind to find out whether the three proposed assesseees should or should not be assessed jointly as members of a joint Hindu family. He accordingly at different dates examined Radhey Lal and Balmukand. From statements made before him the Income Tax officer came to the conclusion that the three proposed assesseees were really members of the same joint Hindu family. He taxed them jointly with a certain amount of tax. The first point that is urged before us is that this procedure was wrong inasmuch as the assesseees were never given an opportunity to contest and disprove the allegation that they were members of a joint Hindu family and were liable to be taxed jointly.

4. In actually assessing three persons mentioned above the Income Tax Officer examined the account books produced before him. He proceeded, according to his own assessment order, u/s 23 (3) Income Tax Act. That section lays down that where a return has been made and the Income Tax Officer has reason to believe that the return is incomplete or incorrect he shall call upon the assessee to produce evidence and after hearing all the evidence that may be liable to be examined, the officer will make an assessment. It is to be noted that the Income Tax Officer was not professing to proceed u/s 23, Sub-section (4), which allows, in certain cases of default by the assessee, the Income Tax Officer to make an assessment "to the best of his judgment."

5. The Income Tax Officer having found that some of the books of the assesseees were not clear as regards the income derived by the owners thereof from dealing in precious metals, assessed the income at Rs. 45,000. He did not state what was the basis of his computation. The assesseees raised the point, viz., that the Income Tax Officer was not justified under the law in making what was virtually an assessment to the best of his judgment. The assesseees raised two other points. One is about a sum of Rs. 772, a sum said to have been the amount of a loss and another sum of Rs. 1,000, the estimated income from interest payable to Balmukand. As regards the amount of Rs. 772, we do not consider it at all, because in the appeal that was filed against the assessment made by the Income Tax Officer, no complaint was made as to the exclusion of this sum from the account.

6. As regards the sum of Rs. 1,000, we also exclude it from our consideration, because on the admitted facts there was no account book produced by Balmukand and the previous year's income on the head was Rs. 1,000. Thus there was certainly a basis on which the Income Tax Officer could estimate the income for the year in question.

7. We now proceed to consider the points of law that have been stated above. It is not denied that the assesseeas were never told that they were going to be assessed as members of a joint Hindu family. The notices that were issued to them indicated that they were going to be assessed separately. The notices never

stated that they should be assessed jointly and therefore no "issue," in the ordinary sense of the word, ever arose between the Income Tax Officer on the one hand and the assesseees on the other as to the jointness or separation of the family. If it be true, as has been stated, " that the Income Tax Officer came to know that the assesseees were really members of a joint Hindu family, it was his duty, in the name of fair play, to tell the assesseees that he proposed to assess them jointly as members of a joint Hindu family and to call oh them to show cause why he should not proceed accordingly. As already stated, the procedure that he had adopted was to assess the assesseees separately. The mere fact that the statements of Radhey Lal and Balmukand taken at different dates indicated that they were members of a joint Hindu family along with Radhey Lal's son Shyam Lal, did not justify the Income Tax Officer in the procedure that he adopted. From the fact that the assesseees were not called upon to adduce any evidence in support of their case of separation they were unable to produce any evidence. When the matter went up in appeal before the Assistant Commissioner, the assesseees wanted to produce a copy of a registered will alleged to have been executed by Bankey Lal, the father of Radhey Lal and Balmukand. But that officer refused to accept it on the ground that it had not been tendered before the Income Tax Officer. The assesseees however never had any chance to produce the document before the Income Tax Officer. We are of opinion that there was a material irregularity and disregard of the procedure as laid down in Sections 22 and 23, Income Tax Act, in assessing the applicants without giving them any information of the proposal to do so and without permitting them to adduce evidence in support of their contention. This is our answer to the first question.

8. As regards the second question, viz., whether the Income Tax Officer was justified in fixing the income of the assesseees at the sum of Rs. 45,000, we are of opinion that what the Income Tax Officer virtually did was to act under Sub-section (4), Section 23, Income Tax Act. If it was true, as we assume that it was true, that the assesseees' account books did not furnish any proper clue of the actual income, it was open to the Income Tax Officer to accept such evidence as he might get for the purpose of finding out the true income. He does not in his order state any basis at which he arrived at the figure of Rs. 45,000 Section 13, Income Tax Act, did not authorize him to act arbitrarily and without any evidence. If the account books did not furnish any method of computation of the profits, he had to employ such methods, and such basis as appealed to him as the best, but he had to employ some "basis" or method as he thought fit. But he did not employ any method at all. We are therefore not in a position to say that he acted legally in the matter. Our answer therefore to this question is that the assessment was illegal having regard be the provisions of Section 23, Sub-section (3) of the Act.

9. Let a copy of this judgment under the seal of the Court be sent to the Commissioner of Income Tax. As the assesseees have substantially succeeded, they will have their costs of this reference. The learned Government Advocate is entitled to a day's fee which is Rs. 250. He will certify payment to him within the

prescribed period.

10. Mr. Kunzru has argued that the costs of the reference which have been awarded to the applicants should also include the sum of Rs. 100 deposited by his clients for a reference under Sub-section (2), Section 66, Income Tax Act. We have heard the learned Counsel for the Government on the point. We can regard the amount of Rs. 100 deposited by the assessee only as a part of the costs of the reference. All fiscal enactments must be construed in favour of the subject and it cannot be said that if an assessee has not been properly taxed and if he succeeds on a reference in the High Court, yet whether he succeeds or loses, he must lose a sum of Rs. 100, simply because an Income Tax Officer has chosen to make an assessment. We think therefore that the sum of Rs. 100 is a part of the costs of the reference, and we therefore direct that it will be taxed as such.