

**(1931) 07 CAL CK 0023**  
**In the Calcutta High Court**

**In Re: Sadaram Puranchand**

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**Date of Decision :** 21-07-1931

**Acts Referred:**

Income Tax Act, 1961 — Section 22(2)

**Citation :** AIR 1931 Cal 729

**Hon'ble Judges :** Rankin, C.J;S.K. Ghose, J;Pearson, J

**Bench :** Full Bench

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**Judgement**

Rankin, C.J.—The rule issued in this case has reference to the year of assessment, 1929-30 and the year of account in the case of these assesseees was the Ram-navami year 1985. The assesseees are an unregistered firm whose principal place of business is Calcutta but who have a branch in Cawnpore and three branches at Bhagalpur.

2. On 26th July 1929, the income tax Officer, Calcutta, issued a notice u/s 22 (2), income tax Act, requiring the assesseees to furnish by 6th September a return of their total income for the previous year. In September the assesseees put in a petition to the effect that the accounts from their mufassil branches had not as yet been received and were given time up till 20th October to submit their return, In October they filed another petition asking for further time on the ground that their accounts had not yet been adjusted by reason of some discrepancies in the trial balance of their branch accounts. This petition was on 25th October rejected so that thereafter the assesseees were in default in respect of their return, They had however the right given to them by Section 22 (3), namely, that they could furnish their return at any time before the assessment was made

and any return so made shall be deemed to be a return made in due time under this section.

3. On 15th November notice was given to the assesseees u/s 22 (4) requiring them to produce their books of account for Ramnavami 1985 on 16th December. The assesseees, on 16th December, filed a return showing an income in the year of account of Rs. 18,000, with an explanatory note stating:

The accounts are under adjustment and will be completed in a month's time.

4. The question before us is as to the correctness of the action taken by the income tax Officer upon receipt of this return. On 16th December he recorded an order:

Issue notice under Sections 23 (2) and 22 (4) for evidence and accounts of the Head Office as well as all the branches and fix 19th December 1929 at 11-30 a. m.

5. On the following day, the 17th, a combined notice under Sections 23 (2) and 22 (4) was issued accordingly that is to say, the assesseees were called upon (1) to attend at the income tax Officer's office at 11.30 a.m. on the 19th or to produce or cause to be produced there any evidence on which they might rely in support of their return; and (2) at that time and place to produce or cause to be produced their books of account for the Head Office and the branches. This notice, though issued on the 17th, was not received by the assesseees until 3 o'clock in the afternoon of the 18th. On the following day the assesseees attended on the income tax Officer by their pleader and presented a petition asking for another month's time:

to enable the petitioners to produce conclusive evidence of their previous year's income.

6. This petition contained statements to the effect that the branch accounts were lying at the branches and that the return had been submitted

on obtaining instructions from branches and mufassil about the position of affairs.

7. It stated also that the Head Office accounts were at the petitioners' native place for settlement of certain disputed accounts. The income tax Officer refused to give any farther time saying that

no time can be allowed after submission of return for which the party already got enough time.

8. He proceeded to make an assessment and assessed the assesseees on the sum of Rs. 3,55,000.

9. The rule issued by this Court calls upon the Commissioner of income tax to state a case on the following question:

Whether the income tax Officer was entitled to make an assessment u/s 23, Sub-section (4) by reason of the petitioners failing on 19th December last to comply with the notice of the 17th December last calling upon them to produce their books of account and adduce evidence in support of the return dated 16th December last.

10. From certain reports received from the income tax Officers at Cawnpore and Bhagalpur to the effect that the assesseees' representatives were in August and September stating that the branch accounts were in Calcutta, and from the

petitions presented to the income tax Officer in Calcutta, on 6th September and 19th October, the Commissioner of income tax draws the conclusion that from 19th October to 19th December all books of account were in Calcutta. He disbelieves the allegation that the Calcutta books had been sent to Rajputana for collection of outstandings.

11. His finding is that the assessee could have produced their books of account on 16th December 1929, and 19th December 1929 if they had wished; and he further infers and finds that they preferred to see what sort of an assessment would be made on them in the absence of accounts before producing them.

12. It is for the Commissioner, in stating a case, to find the facts, and I accept the finding that the books both of the Head Office and branches were in Calcutta from October till December. This means that the assessee is a shifty person, full of excuses and not minded to be either expeditious or straightforward. Even so however it is very necessary to see whether the income tax Officer had taken proper and reasonable steps to entitle him to make an assessment in default u/s 23 (4). The defaults relied upon by the income tax Officer in his order of 19th December was "default under Sections 23 (2) and 22 (4)." Whatever criticism may be passed upon the return filed on 16th December, it was a return; it was accepted as such; a notice u/s 23 (2) was issued upon it and the default relied upon by the income tax Officer was not default in submitting a return. The assessee's return therefore having been made before assessment had to be treated as a return made in due time: of Section 22 (3). Before such a return could be disregarded, the assessee was entitled to a reasonable opportunity to produce any evidence upon which they might rely in support of the return. It is quite probable that their accounts were not in apple-pie order and in the return itself the assessee had stated that the accounts were still under adjustment. They were entitled to a reasonable opportunity not merely to collect and produce the books but to support or supplement their books by any other evidence on which they might rely. Now whether a notice received at 3 p. m. on the 18th requiring them to produce any evidence on which they might rely in support of their return on the 19th is a reasonable notice affording the assessee proper opportunity to comply with its terms is not, I think, a mere question of fact. Whether a given time is a reasonable time is no doubt a question of fact; but on the border line the question arises whether the time is not so short that it cannot be reasonable. Save upon very special facts, the time allowed in the present case is unreasonably short, if it be considered as an opportunity to the assessee to support their return in respect of a Head Office and four mufassil branches. The income tax Officer proceeded expressly upon default u/s "23 (2) as well as Section 22 (4). I am prepared to hold as a matter of law that he did not give to the assessee such reasonable opportunity as the Act requires to produce their evidence in support of their return.

13. It is said however that the income tax Officer was entitled to make an assessment in default by reason of the assessee's failure to comply with the

requirement made u/s 22 (4) that they should produce their books. The principle upon which he acted was that no time can be allowed after submission of return for which the party had already got enough time. The contention is that although the return filed on 16th of December must be deemed to have been made in due time u/s 22, nevertheless, as a notice had been issued on 15th November calling for the books to be produced on 16th December the second notice, received on 18th, made the assessee liable to be assessed independently of any evidence in support of their return after their failure to produce the books on the morning of the 19th. Now, I quite agree that if an assessee has books and does not produce them, he can be assessed in default u/s 23 (4), whatever other evidence he might choose to put forward in support of his return. Other evidence, in the absence of the books, can hardly satisfy a reasonable man. But I do not think that it was ever intended by the Act that failure to produce books, prior to the filing of a return, should deprive the assessee of his right to have the return duly and properly inquired into. A return which by Section 22 is to be deemed to be a return made in due time cannot be treated as still born because of a previous failure to comply with a notice u/s 22 (i). The principle enunciated by the income tax officer that

no time can be allowed after submission of return for which the party already got enough time.

is I think too broad. In fact on 17th December the income tax Officer very properly issued a second notice for the books requiring them to be produced at the same time as any other evidence on which the assessee might rely. The two things in any ordinary case would go together and be done at the same time; and if, as I think, the time given was much too short to enable the assessee to deal with the matter properly, I do not think that they can be held liable to an assessment on the basis of default by reason merely of a finding that the books were in Calcutta. The assessee may perhaps deserve little sympathy, but an assessment in default is a very serious thing; and unless it is open to the Court to insist that notices under Sections 23 (2) and 22 (4) are given so as to afford reasonable opportunity to an assessee to comply with their requirements the honest and diligent tax-payer will have no security for fair treatment and no remedy in the absence of fair treatment. Assessee who are not diligent or straightforward may no doubt be treated very strictly, but in such cases it is a plain and unnecessary mistake to order them to comply with the statutory requirements in an unreasonable time and to base an assessment in default upon their noncompliance. On the footing that the return filed on 16th December was a good return, I cannot hold that the notice dated 17th December entitled the Income tax Officer to make an assessment in default upon the 19th. I would answer the question put to us in favour of the assessee and hold that the assessment made u/s 23, Sub-section (4) on 19th December is invalid.

14. The assessee must have their costs.

Pearson, J.

15. I agree.

S.K. Ghose, J.

16. I agree.