

(1942) 02 AHC CK 0005
In the Allahabad High Court
L BISHAMBHAR NATH IN RE.

Date of Decision : 16-02-1942

Acts Referred:

Citation : (1942) 10 ITR 379

Judgement

The facts of this case are very similar to the facts in Miscellaneous Case No. 490 of 1937 in which we have just delivered our judgment. The assessee in this case was Bishambhar Nath, but the assessment year was the same, namely 1934-35. In this case also, according to the Income Tax Officers opinion, some income had escaped assessment and a notice u/s 34 read with Section 22 (2) of the Indian Income Tax Act was served on the assessee and a second return was submitted by the assessee blank with the observation that on income escaped assessment. The return in this case well was duly signed and duly verified. In this case too notice u/s 22 (4) was served on the assessee for the production of account books, but the assessee's account books were produced and there was no default committed in complying with the notice u/s 22 (4) of the Act. In this respect this case is distinguishable from the facts of the case that we have just disposed of.

For the reasons given in the former case referred to above we answer question No. 1, question No. 3 in the affirmative.

As regards question No. 4, although a notice u/s 23 (2) may not have been necessary-in any event we are not in possession of sufficient facts to give a definite opinion on this point-we hold the view that the assessment u/s 23 (4) was illegal, and the view of the Income Tax Officer that there was a default in connection with the notice u/s 22 (2) of the Act was not justified. We answer the second part of question No. 4 in the affirmative.

As regards question No. 4, although a notice u/s 23 (2) may not have been necessary-in any event we are not in possession of sufficient facts to give a definite opinion on this point-we hold the view that the assessment u/s 23 (4) was illegal, and the view of the Income Tax Officer that there was a default in connection with the notice u/s 22 (2) of the Act was not justified. We answer the second part of the question No. 4 in the affirmative.

As regards question No. 5, we are of the opinion that the Section 34 was applicable to the facts of the present case, and we answer that question in affirmative.

The learned Advocate-General on behalf of the Department drew out attention to the fact that there was no appeal against the assessment order, as indeed there might have been in the present case, but the assessee took resort to proceedings u/s 27 of the Act, and the Income Tax Officer rejected the application of the assessee and the Assistant Commissioner rejected the appeal of the assessee. It is contended on behalf of the Department that the question regarding the illegality of the return does not arise to of Section 27 proceeding. That may be so, but we have got to answer the questions that have been referred to us and we may say here also that the question were involved in the question mentioned in the application u/s 66 (2) of the Act. Beyond noticing this objection of the learned Advocate-General and beyond saying that we agree with him that the question does not arise u/s 27 proceedings we answer the questions in the way indicated above.

In the circumstance of the case we think the parties ought to pay their own costs of this reference. The learned Advocate-General is entitled to a fee of Rs. 200. Let a copy our judgment under the seal of the Court and the signature of the Registrar be sent to the Commissioner of Income Tax.

Reference answered accordingly.