
(1933) 04 AHC CK 0003
In the Allahabad High Court
PALLU MALL BHOLA NATH, IN RE.

Date of Decision : 28-04-1933

Acts Referred:

Income Tax Act, 1961 — Section 22(4)

Citation : (1933) ILR (All) 804 : (1933) 1 ITR 235

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Judgement

Niamatullah, J.

This is a reference under s. 66(3) of the Income Tax Act. The Income Tax Commissioner was required by an order of a Bench of this Court, dated 20th July, 1931, to state a case in relation to three questions therein formulated. The case has since been stated. The only facts which it is necessary to state for the purpose of the reference before us are these :-

The assessee, Sita Ram, was required by the Income Tax Officer to furnish a return, which he did. Subsequently the Income Tax Officer issued, what purports to be a notice u/s 22(4), Income Tax Act, calling upon Sita Ram to produce his account books for the years 1983 to 1985 Sambat. Sita Ram produced his account books for the years 1984 and 1985 but not those for 1983. On being questioned by the Income Tax Officer on a later date as regards the circumstances in which he failed to produce the accounts for the year 1983 Sambat, he explained that the same had been field in the Court of the Munsif, Benares. The Income Tax Officer sent a communication to the Munsif asking whether the assessee's account books for the year 1983 Sambat, had been field in his Court, as alleged by the assessee. The Munsif replied in the negative. Subsequently two other notices u/s 22(4) were issued to the assessee. It is not necessary to enter into the details of those notices. The Income Tax Officer was of opinion that the assessee failed to comply with these latter notices as well. Accordingly the Income Tax Officer made an assessment to the best of his judgment u/s 23 (4), Income Tax Act. The significance of an assessment u/s 23 (4), is that no appeal is permitted, and the Income Tax Officer's assessment is

final subject to the general revisional jurisdiction of the Commissioner u/s 33, Income Tax Act. I may however mention that the assessee is not altogether without a remedy where an Income tax Officer makes an assessment u/s 23(4), on the ground that the assessee failed to comply with a notice issued u/s 22 (4), because he can apply, u/s 27 for the annulment of the assessment on sufficient cause being shown and for a fresh assessment being made. In case of an improper refusal by the Income Tax Officer, the law allows an improper refusal by the Income Tax Officer, the law allows an appeal to the Assistant Commissioner u/s 30 of the Income Tax Act. It appears that the assessee in the present case actually took action u/s 27 of the Act, but without success. He also preferred an appeal to the Assistant Commissioner, but I am informed that it was abandoned. It is not necessary to pursue this aspect of the case any further.

On the assessment being made by the Income Tax Officer u/s 23 (4), Income Tax Act, the assessee preferred an appeal to the Assistant Commissioner, who after examination of the record, expressed the opinion that as the Income Tax Officer had made the assessment to the best of his judgment under s. 23(4), no appeal lay. The assessee moved the Income Tax Commissioner to state a case for reference to the High Court. On this request being refused the assessee successfully moved this Court for an order requiring the Income Tax Commissioner to state a case in reference to the three questions which we are now called upon to decide. These questions are as follows :

(1) Whether the Assistant Commissioner was right in professing not to admit the appeal, when he partially entered into the merits of the appeal, and saw whether the Income Tax Officer was right or not in making an assessment to the best of his judgment. (2) Whether the order of the Assistant Commissioner virtually amounted or not to an order dismissing an appeal under s. 31, and whether or not, therefore, the assessee had a right to approach the Commissioner to state a case ? (3) Whether, in the circumstances of the case it was open to the Income Tax Officer to issue a notice under s. 22, cl. (4), of the Income Tax Act, and whether on account of a non-compliance with that order an assessment to the best of the judgment of the Income Tax Officer could be made.

I prefer to deal with the last question first. The learned advocate for the assessee has pointed out that all the notices purporting to be those under s. 22(4), issued by the Income Tax Officer in this case, were issued after the assessee submitted his return under s. 22(2). His contention is that the Income Tax Officer cannot issue a notice under s. 22(4), after the assessee submits his return and that it is only after the assessee has been called upon to furnish a return and before he has actually furnished a return that the Income Tax Officer can issue a notice under s. 22(4). At one time there was some difference of opinion on this question. I had to deal with this point in *In re Lachman Prasad Babu Ram. Mukerji, J.*, took a different view, and the matter was referred to a Full Bench; but unfortunately the reference proved to be infructuous. The view which I expressed on that occasion is wholly against the contention which is now put

forward by the learned advocate for the assessee. I have carefully considered Ss. 22 and 23 of the Act in the light of the arguments addressed to me today and I see no reason to depart from the view which I then expressed.

I understand that my learned brother is also inclined to take the same view. The decision of a Division Bench of the Punjab High Court was strongly relied on when the case already referred to was argued in this Court. The decision of this Court and of the Calcutta and Patna High Courts were against the Punjab case. The Lahore High Court has since had the occasion to reconsider the question in *Muhammad Hayat v. Commissioner of Income Tax*, and has taken the same view as had been taken by other High Courts. There is thus a unanimity of opinion on the question raised by the learned advocate for the assessee. I hold that it is open to an Income Tax Officer to issue a notice under s. 22(4), at any time after he has called upon the assessee to furnish a return. This being so, the failure of the assessee to comply with the first notice issued by the Income Tax Officer calling upon him to produce the account books for the year 1983 Sambat rendered him liable to be assessed under s. 23(4). In this view, I answer both parts of the third question in the affirmative. As regards the first question, I think the Assistant Commissioner was right in so far as examining the case as to satisfy himself whether the appeal before him was competent. Without examination of the record to some extent he could not have been in a position to find whether the assessment was under s. 23(4), and whether an appeal lay. Accordingly I answer the first question also in the affirmative. It follows from what I have said in answering the first question that the second question must be answered in the negative. Accordingly I answer it in the negative.

BENNET, J. - I agree with the observations which have fallen from the lips of my learned brother and I desire to add a few words on my own account on one of the points which have been raised and which is the main point in this case, that is, whether the issue of a notice under s. 22(4), of the Income Tax Act, after the filing of the return under s. 22(2), was ultra vires or not. On this I would make the following comments :

Section 23(4), deals with three clauses. The first clause is failure to make a return. The second clause is failure to produce accounts or documents required by the Income Tax Officer. The third clause is failure to attend or produce evidence. Now these clauses are separated by the disjunctive conjunction "or". The middle clause is not connected with the other clauses, but is separated from them by these two disjunctive conjunctions "or, or". I consider, therefore, that the words cannot be imported into the middle clause from the other clauses and that the middle clause as it stands is complete in what it expresses. The learned advocate for the assessee desires to add to the middle clause the words "before he has made a return." I consider that under the ordinary rules of English grammar, these words cannot be imported into the middle clause. The reason which the learned counsel gives for desiring to import these words is that the last clause begins with the words "or having made a return....." The mere

fact that the last clause uses these words is not a reason for importing the negative into the second clause.

The second argument I would call the argument from logic. In my opinion it would be illogical to impose the penalty of assessment under s. 23 (4), against which there is no appeal, for the non-production of accounts when the order of the Income Tax Officer was issued before the return was filed, and hold that the penalty could not be imposed if the order was made after the return was filed. There is no reason whatever to distinguish these two cases. The failure in the one case is equally worthy of penalty with the failure in the other case. To draw a distinction between an Act in an illogical manner if it can be interpreted in a logical manner. The third point is that, if the argument for the assessee were accepted there would be no penalty provided for the failure of the assessee to produce accounts or documents required by the Income Tax Officer if the order was made after the return was filed. The learned counsel for the assessee referred to s. 37; but that section really provides for the production of evidence from any person and not specially from the assessee, and therefore, we cannot look to that section for a penalty for the assessee's non-production of the accounts or documents.

The fourth argument is from the course of business. It is natural for the Income Tax Officer to take up a case of an assessee when his return is furnished, and the Income Tax Officer then sees what books or documents are required, and he issues a notice on the assessee to produce his books or documents. Such will be a natural course of procedure in assessment. Further, sub-s. 22(4), itself provides that the notice is to issue to a person upon whom a notice has been served under sub-s. (2). It is, in my opinion, absurd to suggest that the time during which the Income Tax Officer could issue a notice under s. 22 (4), is limited to the time between the service of a notice on an assessee under s. 22(2) and the return furnished by the assessee in compliance with that notice. For these reasons I agree with the view expressed by my learned brother, and I answer the questions as he has answered them.

By the Court. - Let a copy of our order be sent to the Income Tax Commissioner. The assessee shall pay the costs of this reference. We assess the fee of the counsel for the Crown at Rs. 150, which shall be taxed as costs if certificate therefore is filed by him within the period prescribed by rules.

Reference answered.