INCOME-TAX REFERENCE.

Before Sanderson C. J. and Richardson J.

BISHNU PRIYA CHOWDHURANI. *In the matter of a petition of.**

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June 13.

Income-tax Assessment— Reference to High Court—Income Tax Act (XI of 1922). s. 66 (3)—Verified statement by assessee under s. 22 (2)—Negative assertion—Burden of proof—Assessment based on general assumptions only—Mandamus.

An assessee having in a verified return of income (under s. 22 (2) of the Indian Income Tax Act, 1922) stated that he derived no income from *bastu* lands, was required by an Income Tax Officer to prove that statement and, in the absence of such proof, the Income Tax Officer proceeded to assess him on income from that source without otherwise satisfying himself that he had such income. On an appeal being filed against such assessment, the Assistant Commissioner of Income Tax required the assessee to prove his negative assertion and, in the absence of such proof, the assessment was confirmed. An application was then made to the Commissioner of Income Tax requesting him to state a case to the High Court under s. 66(2) of the Act but the Commissioner refused to state the case on the ground that no question of law arose. The assessee then applied to a Division Bench of the High Court (Sanderson C.J. and B. B. Ghose J.) having jurisdiction over the place of assessment (Midnapur), under s. 66(3) of the Act for a *mandamus* requiring the Commissioner to state the case and to refer it, and the Court thereupon issued such a requisition :—

Held, upon the hearing of the case, that the assessment was bad and should be cancelled.

CASE stated to the High Court under section 66(3) of the Indian Income Tax Act (XI of 1922).

The facts material for the purpose of this report will fully appear from the following case which was submitted to the High Court by the Commissioner of Income Tax of Bengal in accordance with the order of

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the Court dated 16th January 1923 made on the petition of Iswar Chandra Chowdhury, on his death his heiress and legal representative, Bishnu Priya Chowdhurani, assessee-objector.

COMMISSIONER'S REPORT.

In accordance with the request contained in their order dated 16th January 1923 on the petition of Babu Iswar Chandra Chowdhuri to state a case under the provisions of section 66 of the Indian Income Tax Act (XI of 1922), I have the honour to submit the following for the opinion of the Hon'ble High Court.

1. History of the Case :—

The petitioner submitted a return of his income in accordance with section 22 (*2*) of the Act on the 24th June 1922 in which he declared an income of Rs. 3,966-11-2, which income included nothing on account of *bastu* rents. His accounts were called for and examined on the 1st August following and he was assessed by the Income Tax Officer on Rs. 7,307 including Rs. 1,528-6-4 on account of *bastu* rents, calculated at 2½ per cent. on the assessee's gross rental of Rs. 63,136. It is the inclusion of this item and the method by which the figure has been calculated which forms the subject of the present reference.

On the 16th October following an appeal was filed before the Assistant Commissioner in which this item was the chief subject of objection. This appeal was dismissed by the Assistant Commissioner in his order dated the 12th November which is quoted in the petition filed before the Hon'ble High Court.

On the 16th December a petition was filed before myself requesting me to state a case to the High Court under section 66 of the Act on *inter alia* the two grounds which form the subject of the present reference. This petition I rejected in my order dated the 18th December as it then appeared to me from the petition and the order of the Assistant Commissioner annexed to it, that the questions in issue were purely of fact, namely, (*a*) whether there was any income from *bastu* rents, and (*b*) what that income was, both of which had been decided by the lower Courts.

On receipt of the order quoted above from the Hon'ble High Court on the 30th January last, I examined the whole record in order to ascertain what the questions of law were on which the case was to be stated.

2. The questions for decision :—

(*a*) The petitioner's contention "that the assessment in *bastu* estimated on 2½ per cent. is based on no evidence admissible in a judicial proceeding"

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impugns merely the method adopted by the Income Tax Officer in estimating the amount of income received from this particular source, and followed on appeal by the Assistant Commissioner. The assessment order passed by the Income Tax Officer does not reveal why this particular percentage on rent roll was taken or why this method of estimating the income was followed. But in a note on the margin of the Assistant Commissioner's order sheet appears the following remark: "*Bastu* rent is calculated at 2½ per cent. of the gross rental according to instructions", and the Assistant Commissioner's order supplies the following explanation: "This is the rate adopted in this district for *bastu* and other non-agricultural rents in estates for which no reliable evidence is produced to show a more exact estimate. The main principle of the Income Tax Act is that it is the duty of the assessee to supply the materials of his assessment [*vide* section 22 and section 23 (*4*)]. If he fails to supply them entirely, the Income Tax Officer is to make the assessment to the best of his judgment under section 23 (*4*). If he supplies them but fails to substantiate them under section 23 (*3*), the Income Tax Officer has still "to assess the total income of the assessee". This is apparently to be read with section 23 (*4*) to mean that he must do so "to the best of his judgment." In the present case the assessee was naturally precluded by his contention, that he had no such income whatever, from showing the amount of the income which the Income Tax Officer supposed him to have. The latter accordingly had to fall back on something else, and he actually resorted to a percentage on gross rental, a percentage which, as appears from the Assistant Commissioner's order, was deduced from other similar cases occurring in the same district, was generally applied in the district in such cases and, apparently, was generally accepted by the assessees as a fair basis of computation.

The first question therefore which I have the honour to refer for the opinion of the Hon'ble High Court is:—

Whether in the absence of other reliable data as to the income of an assessee from a certain source, an Income Tax Officer is justified in making and an Assistant Commissioner in upholding an assessment based on a formula which has been found in practice generally applicable in similar conditions to incomes from that source.

(*b*) The second contention of the petitioner "that the learned Assistant Commissioner erred in law in assessing tax on *bastu* without finding on evidence that there was *bastu* assessable under the Indian Income Tax Act, 1922" is of greater importance. It appears from the assessment record that the inclusion of the item Rs. 1,528-6-4 on account of *bastu* income by the Income Tax Officer in his assessment was based on no foundation in fact at all. This assessment order reads as follows: "The

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Gomastha says no *bastu* rent is received while the rent roll amounts to Rs. 63,135-15. No papers have been adduced concerning the last settlement showing that no *bastu* rent is realised. I cannot accept this. It is too much to believe that persons holding non-agricultural land pay no rent." From this it will be seen that the Income Tax Officer assumed that the assessee had tenants holding non-agricultural land and that he derived income therefrom. The assessee in his verified return of income under section 22(2) of the Act, had stated that he had no such income but the Income Tax Officer required him to prove that negative and in the absence of evidence in its support—he says " no papers have been adduced concerning the last settlement showing that no *bastu* rent is realised "—held that he had failed to prove it, and proceeded to make an assessment on the general assumption that a landlord must have income for such non-agricultural sources assessable to income tax.

When the case came before the Assistant Commissioner on appeal, the same attitude was adopted. It was assumed that there must be non-agricultural *bastu* income included in the rent roll and the assessee was required to prove his contention that there was not. The evidence produced was considered unsatisfactory relating as it did to a state of affairs twenty years before. Here again a reference is made to the District Settlement, the implication being that it was the assessee's duty to support his negative assertion from the settlement record.

The question of law which thus emerges, which seems to be that raised in paragraph 9, clause (*e*) of the petition annexed to the Hon'ble High Court's order, is as follows: " Whether an assessee having in a verified return of income stated that he derived no income from a certain source can be required by an Income Tax Officer to prove that statement: Whether, in the absence of such proof, the Income Tax Officer is legally justified in assessing him on income from that source without otherwise satisfying himself that he has such income: Whether on such an assessment being made and an appeal being filed against it, an Assistant Commissioner can require the assessee to prove his negative assertion: and whether, in the absence of such proof, he is legally justified in confirming the assessment.

OPINION :

(*a*) To the question stated in paragraph 2 (*a*) *ante*, I am respectfully of opinion that the answer must be in the affirmative but the condition as to the absence of other reliable data is of great importance. It is the duty of officers of the Income Tax Department to base their estimate as far as possible on ascertained facts, and a formula such as that used in the present case should only be applied when other sources of information

fail. In the present case a satisfactory source was apparently ready to hand in the settlement record, but was not utilised.

(*b*) The question stated in paragraph 2 (*b*) *ante* admits in my opinion of but one answer. The ordinary principle of evidence applies and the burden of proof is on the party which would fail if no evidence were produced, *i.e.*, on the officers of the Income Tax Department. The latter cannot proceed on general assumptions to reject an assessee's verified statement. If an assessee states that he has no income from a certain source and the officers of the department disbelieve him, it is for them to prove that he has some such income and not for him to prove the reverse. Any assessment based on the inability of the assessee to prove his negative statement and on general assumptions only is bad and should be cancelled.

E. N. BLANDY,
Commissioner of Income Tax, Bengal.

Upon the hearing of the case:

Babu Narendra Nath Set, for the petitioner.

No one appeared for the Government.

SANDERSON C. J. We have read the case which has been submitted to us by Mr. Blandy, the Commissioner of Income Tax, Bengal. A learned vakil has appeared for the Assessee, but the Crown has not been represented.

In my judgment, for the purpose of disposing of this case, it is sufficient for us to say that we agree with the opinion expressed by Mr. Blandy on the second point raised in the case. This opinion is expressed in clause (*b*) at the end of the case and we, speaking generally, agree with the reasons which induced him to arrive at that decision. It is not necessary for us to consider or express any opinion upon the first question which is dealt with in the case, inasmuch as the opinion of Mr. Blandy upon the second question is sufficient to dispose of this case.

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We, therefore, remit the case to the Commissioner of Income Tax in order that he may deal with it in accordance with our judgment, which, as I have already said, confirms his opinion. The assessee will have the costs of the case which we assess at Rs. 150 inclusive of all items.

RICHARDSON J. agreed.

A. P. B.

CRIMINAL REVISION.

Before C. C. Ghose and Cuming JJ.

1923

May 15.

KRIPAL SING

v.

EMPEROR.*

Kirpan—Carrying kirpans, exceeding nine inches in length, in the town of Calcutta—Notification of Commissioner of Police, 21st October 1922 — Calcutta Police Act (Beng. IV of 1866) s. 62A (2) (6).

The carrying of a sword or *kirpan*, exceeding nine inches in length, in the town of Calcutta, is an offence under s. 62A of the Calcutta Police Act.

Quære: whether the carrying of a *kirpan*, more than nine inches long, in Bengal, outside Calcutta, is an offence.

THE petitioner was the mohunt of the Sikh temple in Chittagong. On the 27th April 1923, while going along Nimtola Ghat Street, he was arrested by the police for carrying without license a *kirpan* over 3 feet long, and placed on trial before the Second Presidency Magistrate, charged under s. 62A of the Calcutta Police

* Criminal Motion, No. 491 of 1923, against the order of E. H. Keays, Second Presidency Magistrate, dated May 2, 1923.