

INCOME-TAX REFERENCE.

Before Rankin C. J., C. C. Ghose and Buckland JJ.

GANGASAGAR ANANDA MOHAN SAHA, *In re.*

v.

1927

Dec. 13.

THE COMMISSIONER OF INCOME-TAX,
BENGAL.*

Income-tax—Duty of Commissioner of Income-tax in cases under s. 66 (3) of the Income-tax Act of 1922—Income tax Act (XI of 1922), s. 66 (3).

In making a reference to the Court under section 66 of the Income-tax Act of 1922, it is the duty of the Commissioner of Income-tax to find all relevant facts. He is not merely required to state the questions of law and give his opinion; he is required above all things to state the facts upon which the questions of law must be decided.

CIVIL REVISION CASE.

The petitioners, Messrs. Gangasagar Ananda Mohan Saha, were assessed, in the assessment of 1926-27, on a profit of Rs. 1,18,141, as a firm. The assessees claimed to be assessed as an undivided family on the ground that they were joint and the profits of the business were jointly enjoyed by them and there was no separate capital account standing in the books of the firm in the name of any member of the family. The Income-tax Officer of Dacca did not accept this contention. Against the aforesaid order of assessment, the petitioners preferred an appeal before the Assistant Commissioner of Income-tax, Dacca. He reduced

* Civil Revision No. 1296 of 1927, against an order of the Commissioner of Income-tax, Bengal, dated May 4, 1927, under ss. 33 and 66 (2) of the Income-tax Act XI of 1922.

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the assessment by Rs. 3,211, by allowing some expenses disallowed by the Income-tax Officer, but he refused to treat the petitioners' firm as an undivided Hindu family business concern and to allow the statutory relief of Rs. 25,000 for super-tax.

Thereafter the petitioners moved the Commissioner of Income-tax of Bengal under sections 33 and 66 (2) of the Income-tax Act and prayed for a review of the orders complained against and also for making a Reference to the High Court on the following questions of law:—

(i) Whether the members of a Hindu family, joint in estate and worship, but who have to live in separate mess only for want of accommodation in the original homestead, should be held in law to constitute a joint Hindu family or not?

(ii) Where the business was started by the members of a joint Hindu family and is confined to the descendants of the original family and no stranger has been taken in and the family is maintained out of the income of their joint estate and business without apportionments thereof amongst the partners, is the family to be regarded for the purpose of assessment as a joint family?

(iii) Whether non-existence of separate capital account in the names of the proprietors belonging to the same Hindu family and non-allocation of profits among them is conclusive proof or not of undividedness in law?

The Commissioner rejected the petition and refused to refer any of the questions.

Thereupon the petitioners moved the High Court and obtained this Rule, calling upon the Commissioner to show cause why he should not state a case in terms of section 66 (3) of the Income-tax Act.

Mr. Dwarka Nath Chakravarty (with him *Mr. Gopal Chandra Das* and *Babu Satyendra Kishore Ghose*), for the petitioners. The facts have not been properly investigated, as the Commissioner should have done. The facts stated in my petition are not disputed.

[RANKIN C. J. We cannot send for the records of the Commissioner. How can we go into the facts?]

My complaint is that the Reference by the Commissioner is defective, as it does not deal with the facts.

The Senior Government Pleader (*Babu Surendra-nath Guha*), for the opposite party.

RANKIN C. J. In this case certain assesseees applied to the Court under sub-section (3) of section 66 of the Indian Income-tax Act of 1922 for an order directing the Commissioner of Income-tax to state a case for the opinion of the Court. The application made to the Commissioner of Income-tax appears to have raised in a somewhat complicated and contentious form various questions which apparently include allegations of fact which the Commissioner of Income-tax disputes and which overlap to some extent; but the real question for determination is whether the assesseees are entitled to be treated for income-tax purposes as a Hindu undivided family. The Commissioner of Income-tax is of opinion that they are not so entitled and that they must be treated as an unregistered firm. We direct that the present Rule be made absolute on that question, namely, whether or not the assesseees are entitled to be treated for income-tax purposes as a Hindu undivided family. That is the sole question which we require the Commissioner of Income-tax to state for our opinion.

I desire to point out that in these cases it is the duty of the Commissioner of Income-tax to find all

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the relevant facts. When a case stated comes before this Court, the Court expects to find all such facts stated in the letter of reference as would enable the Court to decide the question referred to it. It is quite true that the Commissioner of Income-tax is required also to give his opinion. He is not merely required to state the questions of law and give his opinion; he is required above all things to state the facts upon which the questions of law must be decided. I trust, therefore, that when this matter comes before the Court again there will be such findings of fact as will enable the Court to apply the law.

The Rule is made absolute in the sense which I have stated.

Liberty to amend the petition to put in order.

GHOSE J. I agree.

BUCKLAND J. I agree.

S. M.

Rule absolute.