INCOME-TAX REFERENCE.

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

1930
Nov. 24.

In re KRISHNAKUMAR AND MAHENDRA-KUMAR GHOSH.*

Income-tax—Reference to High Court—Case stated, how it should be framed—Indian Income-tax Act (XI of 1922), s. 66 (2).

The case stated by the Income-tax Commissioner should contain only those questions which the Commissioner is minded to refer to the High Court, together with a statement of relevant facts and the Commissioner's opinion upon them. If the Commissioner is not going to refer any question, then he should leave out all mention of it in the stated case.

Abstract questions are not dealt with by the High Court on a reference and questions should be formulated in a concrete way. If the Commissioner thinks that there is a point of law proper to be referred, he is not bound to refuse to refer it merely by reason that the assessee has not framed the question properly. He can frame it properly himself and then refer it.

The Income-tax Commissioner should keep separate his order or judgment on the application before him and the case stated which he is minded to refer to the High Court.

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Facts are sufficiently set out in the judgment.

Amulyacharan Sen for the assessees.

N. N. Sircar, Advocate-General, and *Radhabinode Pal* for the Income-tax Department.

RANKIN C. J. In this case, the Commissioner of Income-tax has stated a case to this Court in a manner which cannot be accepted and the matter must go back to him to state a case properly. It appears that, in this case, as in many other cases which I have noticed, the Commissioner of Income-tax attempts two things by the same document. An application is made to him and he is asked to give certain findings in connection with an Income-tax assessment and, if he takes a certain view, the assessee asks him to refer certain points of law to the High Court. It is quite correct and proper that the Income-tax Commissioner should write a judgment, so to say, giving his reasons

*Reference No. 7 of 1930 under section 66 (2) of the Indian Income-tax Act (XI of 1922).

for the conclusion to which he comes. But if part of the conclusion to which he comes is that it is right to refer a certain question to the High Court, then he ought in strictness to make out another document, namely, a statement of the case upon that point for the opinion of the High Court. The order that he makes will no doubt give reasons why he will state a case on certain questions and refuses to state a case on other questions; but, when he comes to state a case, he has got past that stage, and is only concerned with the questions which he intends to refer to the High Court, and the facts bearing thereon. We do not expect to be troubled with all kinds of questions which he makes up his mind not to refer to the High Court. If he keeps the two things entirely separate, namely, first his order or judgment on the application made to him and then the case stated which he is minded to refer to the High Court, the matter will be clear. In many cases, the two things might with great advantage be separate documents. In the present case, questions were put to the Commissioner by the assessees, as points of law, running to the number of seven. Some of them were very badly framed, because they are stated as abstract propositions and not in such a way as a person accustomed to formulate these questions would do: "Whether an assessment in which there is an error in "the ascertainment of the status of the assessees is "valid in law?" That is far too general a question. If it has got some bearing upon the present assessees' case, let it be stated in a concrete way. If the assessee wants to ask whether all subsequent proceedings are illegal in this case by reason of a certain thing, by all means let him so state. If the question put is "When there is an error in the "application of the charging section, namely, section "3, are not all subsequent proceedings, namely, those "under sections 22 and 23, illegal?" The answer is that these things are not dealt with by this Court in any abstract or unpractical way and the Income-tax Officer and the people who propound to him questions

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should formulate proper questions. In this case, the matter is in a worse condition because, with regard to many of these questions, the Income-tax Commissioner appears to say that he does not refer them to this Court and at the same time he states his opinion at length upon them apparently in case this Court should deal with something which has not been referred to it at all. This the Court cannot and will not do. As regards question (*b*), the position is worse still because after saying and giving reasons why this question is not referable he says, "I therefore refer "question (*b*)." What is this Court to make of that? With regard to other questions also, though the Income-tax Commissioner has apparently made up his mind not to refer them, at the same time it is impossible for the assessees to say whether he is nevertheless meaning to refer them in a hypothetical way. They do not know whether to apply under section 66 (*3*) or not. This case must go back to the Income-tax Commissioner and I must beg him, first of all, to make up his mind what question or questions he is going to refer to this Court. If he is not going to refer any question, then he should leave out all mention of it in the stated case. When he knows what he is to refer and states the facts relevant to those points, it will be possible for this Court to deal with the matter. I would add that if the Commissioner thinks that there is a point of law proper to be referred, he is not bound to refuse merely by reason that the assessee has not framed it properly. He can frame it properly himself and then refer it. The case must go back to the Income-tax Commissioner to state a proper case.

GHOSE J. I agree.

BUCKLAND J. I agree.

S. M.