

INCOME-TAX REFERENCE.

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

*In re BISWESWARLAL BRIJLAL.**

1930

Jan. 27.

*Income-tax—Joint family — Firm — Dissolution — Partnership deed—
Registration—Assessment — Inquiry — Evidence — Income-tax Officer,
powers of—Indian Income-tax Act (XI of 1922), s. 2, cl. (14), s. 66,
cl. (2); r. 2, Form I—Rules thereunder.*

The Income-tax Officer has power under the law to refuse an application for registration as a firm, though made in the prescribed manner with partnership deed, unless he is satisfied on evidence that it is really a firm.

The law gives the Income-tax Officer power to call for evidence of dissolution of the joint family for the purpose of registration under section 2, clause (14), over and above the documentary evidence adduced by the partnership deed in support of the application in Form I under rule 2.

INCOME-TAX REFERENCE at the instance of the assessee.

The facts of the case, out of which arose this Reference by the Commissioner of Income-tax, Bengal, appear fully in the judgment.

Mr. S. N. Banerji and Mr. Bijayprasad Singh Ray,
for the assessee.

*The Advocate-General (Mr. N. N. Sircar) and
Dr. Radhabinode Pal,* for the Income-tax
Commissioner.

RANKIN C. J. In this case, the Commissioner of Income-tax, Bengal, has referred to this Court, under section 66 (2) of the Indian Income-tax Act of 1922, two questions: (1) Whether the Income-tax Officer has any power under the law to refuse an application for registration made in the prescribed manner with partnership deed prior to assessment and, if so, under what section of the Act; and (2) Whether the law gives the Income-tax Officer any power to call for evidence of dissolution of the joint family for the purpose of registration under section 2 (14) over and

*Income-tax Reference No. 4 of 1929, under section 66(2) of the Indian Income-tax Act (XI of 1922).

above the documentary evidence adduced by the partnership deed in support of the application in Form I, under rule 2.

Now, it is abundantly clear that the assesseees in this case carry on a certain business. The Income-tax Officer says that this business has been assessed on the footing that the persons, who carry it on, are members of a Hindu undivided family in business as such. It seems there is the grandfather, who is the senior member, and there are grandsons, who are minors; and the business has been treated in that way until the time with which we are now concerned.

It appears that, after notices requiring the returnable income for the year 1927-28 had been issued, the assesseees, on the 12th October, 1927, applied, purporting to make the application under the rules laid down in the Income-tax Manual, for registration of the firm as a registered firm, within the meaning of clause (14) of section 2 of the Act. They produced a document, according to which these various members, who had formerly been assessed as a Hindu family, said that the parties had been carrying on the business for a long time and that "for various reasons it has become necessary that their respective shares should be defined." Then they entered into a document, which purported to describe an ordinary contractual partnership, each one of the five members of the firm, including the minors, being stated to have an one-fifth share. On this document being presented to the Income-tax Officer, he was immediately suspicious of it, because it appeared to him that, while, no doubt, the members of an undivided Hindu family, owning a family business, might dissolve the family business and enter into a contractual partnership business on their own account, the probabilities of that having been done in the circumstances of this case were extremely remote. It seems tolerably clear, in the absence of some evidence to the contrary, that this piece of paper, which the parties had signed, was expected to be a magical

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talisman, which would protect them from the imposition of Super-tax and had no other reality at all. In these circumstances, the Income-tax Officer required the assesseees to produce evidence of the *bona fides* of this document, some evidence to show that the family as a family had been dissolved, some evidence to show that the business, which had formerly been treated as a joint family business, had really and, in fact, ceased to be so; and no such evidence was forthcoming.

The question, which the Income-tax Officer was asked to refer to us, was whether any set of people purporting to be a firm, as described by clause (14) of section 2, were not entitled to get themselves registered as a registered firm under the rules, however much the document upon which they relied was either forged on the one hand or intended not to be acted upon or otherwise a pure unreality. It is said that the rules contain no provision for an investigation into the reality of such a document. Neither they do. On the other hand, under the Act and under the rules, the right to present such a document at all is only given to a firm constituted under an instrument of partnership specifying the individual shares of the partners; and, if a firm is not a firm in fact constituted under such an instrument of partnership, the Income-tax Officer, in my judgment, is not obliged to receive the application at all or to register the document, which the parties were putting forward. It may or may not be in view of the literal character of some of the other provisions of the Act, that it would be as well to make it clear that the Income-tax Officer may investigate such a question as the present. But there is nothing in the Act to show that he may not investigate such a question and I entirely dissent, as at present advised, from any doctrine, that before investigating into anything, the Income-tax Officer has to show that his investigation is required or permitted by the express terms of the sections. The Income-tax Officer, so far as I know, has to do a great

deal of complicated business by means of an office and I entirely demur to the doctrine that, whenever he investigates anything, he must point to the words of the sections. In the present case, a duty is cast upon him by clause (14) of section 2 and by the rules made thereunder. *Prima facie* it appears to me that he has power to call for evidence as to the dissolution of the joint family.

In these circumstances, it would be sufficient to answer the first question by saying that the Income-tax Officer has the power referred to. As regards the question, under what section of the Act, I propose to leave the assesseees in a state of ignorance; but the Income-tax Officer has the power. As regards the second question, the answer would be in the affirmative.

The assesseees must pay the costs of this Reference.

GHOSE J. I agree.

BUCKLAND J. I agree. I only desire to add a few observations. The question involved would appear to be whether the Income-tax Officer has power to enquire whether the person or the body of persons is or are what he or they represent themselves to be for the purpose of taking advantage of a provision of the Act for the benefit of such person or body of persons. It must be reasonably clear that, if the question is so stated, the Income-tax Officer must have power to make the necessary enquiry to satisfy himself as to the person or persons with whom he is required to deal. If the question be one that is so stated and the answer to the first question propounded is found in the affirmative, the answer to the second question will, in my opinion, be more generally stated by saying that the Income-tax Officer is entitled, for the purpose of satisfying himself as to the matter, which he has to consider for deciding the above question, to go into any evidence necessary for the purpose. Speaking entirely for myself, the statement, as to whether the Income-tax Officer has power to call for evidence of

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dissolution of the joint family may be a correct statement as to his requirements for the immediate purpose. As to that, I express no opinion. But I would say that he is entitled by any reasonable means in his power to call for proper evidence as to the matters, about which he is to be satisfied, before he takes action, which he is required to take.

Attorney for assessee: *C. C. Basu.*

Advocate for Income-tax Department: *Dr. Radhabinode Pal.*

G. S.