

INCOME-TAX REFERENCE.

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

1929
Aug. 2.

LACHHIRAM BASANTLAL BASANTLAL
NATHANI, *In re*.*

Income-tax—Commissioner—Special Income-tax Officer—Powers—Classes of persons—Assessee—Indian Income-tax Act (XI of 1922), s. 5, cls. (4), (5); s. 22, cl. (4); s. 23, cls. (2), (4); ss. 33, 64; s. 66, cl. (1).

The power given to the Commissioner is that the Income-tax Officers shall perform their functions in respect of such "classes of persons" as the Commissioner may direct.

Where the (Income-tax) Commissioner appointed a certain Income-tax Officer as a "Special Income-tax Officer to perform all the functions of "an Income-tax Officer in respect of those persons in Calcutta, whose cases "may be made over to him by me from time to time,"

held that "those persons in Calcutta, whose cases may be made over "to him by me from time to time" was not a class of persons within the meaning of clause (4) of section 5 of the Income-tax Act, and an assessment order made by this officer could not be supported.

It is not possible for any assessee or other person, by looking to the definition given in this order, to ascertain whether or not his case is one which is affected by it.

This order requires a special direction to be given under it, from time to time, assigning, not classes, but individual cases to the officer in question: it is not a course warranted by sub-section (4) of section 5 of the Act.

INCOME-TAX REFERENCE at the instance of the assessees, Lachhiram Basantlal Basantlal Nathani.

The facts of this case appear fully from the Commissioner's Order of Reference, which was as follows:—

In accordance with the provisions of section 66(1) of the Income-tax Act, I have the honour to refer the following case for the decision of the Hon'ble High Court.

The following are the facts of this case.—Messrs. Lachhiram Basantlal Basantlal Nathani, hereafter called the assessees, a Hindu undivided family, having their offices in Calcutta, are merchants carrying on money-lending and share businesses. They also own house property and receive dividends. Their accounting year is *Rāmnāvami* which usually ends in April. On the 15th December, 1927, the Special Income-tax Officer issued a notice under section 22(2) of the Act calling for a return of their income during the previous year, *viz.*, 1923 (*Rāmnāvami*), by the 22nd January, 1928. On the 23rd January, 1928, a petition was filed stating that, owing to the prolonged

*Reference under section 66(2) of the Indian Income-tax Act XI of 1922 by F. W. Strong, Commissioner of Income-tax, Bengal, dated Feb. 21, 1929.

illness of Babu Basantlal Nathani, the proprietor of the firm, to which he ultimately succumbed on the 5th December, 1926, the business was at a stand still and no proper books of account were kept, and so they were unable to "return an accurate income." On the 31st January, 1928, the Income-tax Officer issued a notice under section 22(4) calling for accounts of the accounting year and three previous years and other documents specified therein for the 16th February, 1928. On this day, the assessee applied for a fortnight's time for their production. The Income-tax Officer allowed time and fixed the 28th February, 1928, for compliance with the notice under section 22(4). On the 28th February, 1928, the return was filed. Thereupon, on the 1st March, 1928, the Income-tax Officer issued a combined notice under sections 23(2) and 22(4) asking the assessee to produce any evidence, upon which they might rely, in support of the return and complete sets of accounts of the years 1981, 1982 and 1983 (*Rámnávami*), inclusive of the accounts of all branches and other documents specified in the notice, on the 14th March, 1928. On the 14th March, 1928, the case was adjourned to the 17th March, 1928, and again to the 21st March, 1928, at the request of the assessee's pleader. On the latter date a statement regarding dividends received in the previous year was filed, but no other evidence or accounts were produced. On this day, a fresh combined notice under sections 23(2) and 22(4) issued, calling for evidence in support of the return and accounts for 1981, 1982, 1983 and 1984 (*Rámnávami*) and other documents mentioned therein for the 29th March, 1928. On the 29th March, 1928, the Income-tax Officer adjourned the case to the 30th March, 1928, at the request of the pleader, who signed the order sheet in token of his having seen the order. On the 30th March, 1928, the petitioners or their representatives did not appear, nor were any accounts, or evidence produced and the assessment was made on that day under section 23(4) for non-compliance with the notice under sections 23(2) and 22(4).

On the 21st April, 1928, the assessee presented a petition under section 27 stating that they were prevented by certain unavoidable circumstances from complying with the Income-tax Officer's requisitions. The Income-tax Officer, however, rejected the petition, holding that sufficient time had been granted.

Against the Income-tax Officer's order under section 27, refusing to reopen the assessment, the assessee filed an appeal before the Assistant Commissioner of Income-tax, in which a fresh plea, which was not raised at the time of assessment or in the petition under section 27, was taken that the Special Income-tax Officer had no jurisdiction to assess them. The Assistant Commissioner upheld the order of the Income-tax Officer under section 27. As regards the question of jurisdiction, he held that such a question could not arise in appeal, probably because he thought that in an appeal against the Income-tax Officer's order under section 27, he was in the circumstances of the case, only competent to consider whether the assessee was prevented by sufficient cause from complying with the Income-tax Officer's requisitions, though he did not say this.

The assessee has now petitioned me to revise the Assistant Commissioner's order under section 33 or, in the alternative, to make a Reference on the following two questions of law :—

1. Whether the Special Income-tax Officer had any jurisdiction over your petitioners' case within the meaning of sub-sections (4) or (5) of section 5 of the Income-tax Act?
2. Whether the Assistant Commissioner was legally justified in taking the report of the Income-tax Officer as the basis of his order, while that report for the first time, introduced a new fact which the petitioners had no opportunity or occasion to challenge or controvert at the hearing?

I have declined to interfere in revision.

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As regards the questions of law, which I am asked to refer to the Hon'ble High Court, I am of opinion that question (1) does not arise out of the Assistant Commissioner's order on appeal, and I cannot, therefore, refer this question under section 66(2).

Question (2). The facts regarding this question are that the Special Income-tax Officer reported to the Assistant Commissioner of Income-tax in connection with the appeal proceedings that on the 29th March, 1928, the assessee's pleader appeared before him with a *gomástá* and asked for three days' time, on the ground that he had to leave Calcutta for a few days. The Special Income-tax Officer did not grant the time, inasmuch as enough time had then been granted and the financial year was drawing to a close. The date of hearing was then fixed for 30th March, 1928, and the assessee's pleader told him that in that case he would not be present personally, and that the books would be produced by the *gomástá*. The fact of a *gomástá* having accompanied the pleader was not recorded in the order sheet, but the Special Income-tax Officer reported that he distinctly remembered his having done so. The Assistant Commissioner stated in his order, on appeal, that he accepted the report of the Special Income-tax Officer. So the assessee's contend that the Assistant Commissioner introduced a new fact in his order in accepting the Income-tax Officer's report. I may point out, in this connection, that it is immaterial whether the assessee's *gomástá* was present or not, when the Income-tax Officer passed his order of the 29th March, 1928. It was sufficient that the assessee's duly accredited pleader was present, and signed the order sheet in acknowledgment of his having seen the order. As the question does not affect the merits of the case, I am not inclined to refer it.

In the circumstances I cannot refer either of the questions under section 66(2) of the Act.

As question (1) is, however, of considerable importance, I am inclined to refer it under section 66(1). The assessee's argument in connection with this question is that the Special Income-tax Officer had no jurisdiction to assess them, as he was not the regular Income-tax Officer of the district, in which they carry on their business, and so long as the regular Income-tax Officer continued to exercise his territorial jurisdiction, it was not legal to transfer any special case to the jurisdiction of the Special Income-tax Officer. It is not a fact that any special case is transferred to the jurisdiction of the Special Income-tax Officer. The fact is that the Commissioner of Income-tax, by an order in writing, under section 5(4) appointed an Income-tax Officer to perform all the functions of an Income-tax Officer, in respect of all classes of income of a certain class of persons in Calcutta, *viz.* those whose income-tax assessments require, in his opinion, special enquiries and any special scrutiny of accounts, which the ordinary Income-tax Officers having jurisdiction over areas, in which their principal places of business are, cannot undertake, on account of pressure of ordinary work. The Commissioner of Income-tax selects a number of cases of such persons every year for this Special Income-tax Officer to deal with. The ordinary Income-tax Officers cease to function as Income-tax Officers, in respect of this class of persons, during the time when the Special Income-tax Officer exercises his jurisdiction over them under Commissioner's order under section 5(4). There appears to be nothing illegal in this.

Mr. S. N. Banerji (with him *Mr. Prafullachandra Chakravarti*), for the petitioners (assessee's). In this case, the assessment is by the "Special Income-tax Officer"—a person not described in the Act, and the

question is—was this Special Income-tax Officer competent to make any assessment at all, when there was a regular Income-tax Officer in that district. This Reference was made by the Commissioner himself, and he should have incorporated the general order, indicated by him, in his letter of Reference.

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[RANKIN C. J. (to the Advocate-General). Send for it.]

[*The Advocate-General*: I have done so, but it may not arrive till after the midday recess.]

Reads and comments on sections 5 and 64 of the Income-tax Act. It is clear that the assessment can only be made by the Income-tax Officer of the place of business or residence of the assessee. But this Special Income-tax Officer's appointment does not come within the provision of section 5, clause (4).

[RANKIN C. J. The Central Board of Revenue appoint Income-tax Officers and Special Income-tax Officers.]

In that case the matter will be declared by notification under section 5, sub-section (5).

[RANKIN C. J. We will hear the other side now.]

The Advocate-General, Mr. N. N. Sircar (with him *Dr. Radhabinode Pal*), for the Commissioner of Income-tax. Reads the version of the general order regarding the powers of this Special Income-tax Officer, as given in the letter of Reference. This special officer shall have jurisdiction to assess all classes of income of such persons, whose cases may from time to time be given to him by the Commissioner.

[RANKIN C. J. So this "Special Income-tax Officer" is not limited to any special class of cases or persons, for, once any case comes to him, the Special Income-tax Officer has jurisdiction to deal with it. This case will stand adjourned till 2-30 p.m. to-day for the arrival of that order in original.]

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Mr. S. N. Banerji (at 2-30 p.m.): My Lords, the original general order has arrived now. On perusing it, I find that this order does not come within the provisions of section 5, clause (4) of the Income-tax Act, and this assessment cannot be supported in consequence.

[RANKIN C. J. What is your own view, Mr. Advocate-General?]

The Advocate-General: I am of the same view.

RANKIN C. J. In this case the Commissioner of Income-tax, Bengal, has referred to the Court under clause (1) of section 66 of the Income-tax Act the question whether "the Special Income-tax Officer" had any jurisdiction over the petitioners' case within the meaning of sub-section (4) or (5) of section 5 of the Income-tax Act.

The petitioners have been assessed to income-tax in default of compliance with the requirements of notices directed to them under clause (2) of section 23 and clause (4) of section 22 by a gentleman, to whom the name of "Special Income-tax Officer" has been given, in view of the provisions of clause (4) of section 23 of the Act. Divers objections were taken to the assessment, and an appeal was taken to the Assistant Commissioner, which was rejected. An application was then made under section 33 to the Commissioner himself to revise the order of the Assistant Commissioner. In connection with that proceeding, the Commissioner has used his discretion and referred the question to us, which I have set out.

Under the provisions of section 23 of the Act and the cognate sections, the person who, in the ordinary course, has to make assessment is an officer called "the Income-tax Officer," and, by section 64 of the Act, the place of assessment is defined as the place of the residence of the assessee or where he carries on business or, if more places than one, the principal

place of business. The question before us turns upon clause (4) of section 5 of the Act. The Officer who, in this case, made the assessment was Babu Phanindralal Bhattacharya, and the complaint of the assessee is that he was not the Income-tax Officer of the district, in which the petitioners resided or had their principal place of business, though he is a person, who has been appointed by the Commissioner of Income-tax under clause (4) of section 5. Now, the Commissioner, under that section, has power given to him by the following words of the clause: "They shall perform their functions in respect of such classes of persons and such classes of income and in respect of such areas as the Commissioner of Income-tax may direct." For the present purpose, we may leave out of account the reference to "classes of income" and the reference to "areas". So, the power given to the Commissioner is that the Income-tax Officers shall perform their functions in respect of such "classes of persons" as the Commissioner may direct. We have been provided with a copy of the order, dated the 13th December, 1927, under which a direction is given by the Commissioner, with respect to the officer in question. It is as follows: "In exercise of the powers conferred on me by section 5 (4) of the Indian Income-tax Act (XI of 1922), I hereby appoint Babu Phanindralal Bhattacharya, Income-tax Officer, to perform all the functions of an Income-tax Officer, in respect of those persons in Calcutta, whose cases may be made over to him by me from time to time." The question is whether "those persons in Calcutta, whose cases may be made over to him by me from time to time" is a class of persons within the meaning of clause (4) of section 5. I am clearly of opinion that it is not. It is not possible for any assessee or other person by looking to the definition given in this order to ascertain whether or not his case is one which is affected by it. This order requires a special direction to be given under it, from time to time, assigning not classes, but individual cases, to the officer in question. There

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may or may not be objections, serious or otherwise to such a course, but I am clear that it is not a course warranted by sub-section (4) of section 5 of the Act.

In these circumstances, it appears to me that we ought to answer the question put to us in the negative.

The result is that the assessment order made upon the petitioners cannot be supported.

The petitioners must have their costs of the Reference.

GHOSE J. I agree.

BUCKLAND J. I agree.

Question referred answered in negative.

Advocate for the assessee: *Prafullachandra Chakravarti.*

Advocate for the Commissioner of Income-tax: *Dr. Radhabinode Pal.*

G. S.