

INCOME-TAX REFERENCE.

Before Derbyshire C. J. and Costello J.

1935

July 5, 3.

In the matter of S. LALCHAND.*

*Income-tax—Firm—Registration—Refusal by Income-tax Officer—Appeal—
Indian Income-tax Act (XI of 1922), ss. 26A, 30(1), 66(3).*

The fact that section 30, sub-section (1) of the Income-tax Act was amended in November, 1933, clearly indicates that prior to the making of such amendment there was no right of appeal against the refusal of an Income-tax Officer to register a firm under the provisions of section 26A of the Income-tax Act.

Messrs. Bihari Lal Ghasi Ram v. The Commissioner of Income-tax, Punjab and N. W. F. Provinces (1) and Haji Ali Jan v. The Commissioner of Income-tax, Punjab and N. W. F. Provinces (2) cited.

REFERENCE under section 66 (3) of the Indian Income-tax Act.

The facts of the case and the arguments appear fully in the judgment.

S. N. Banerjee and *H. N. Bhattacharjya* for the assessee.

A. K. Roy, Advocate-General, *Radhabinode Pal* and *Rameshchandra Pal* for the Income-tax Department.

COSTELLO J. This matter comes before us under an order of this Court, dated the 3rd July, 1934, made upon the application of a commercial firm carrying on business under the name of S. Lalchand. The Commissioner of Income-tax has submitted a case to the Court under the provisions of section 66 (3) of the Income-tax Act.

The questions of law which were formulated at the time when the Rule was made absolute arise out of

*Income-Tax Reference, No. 5 of 1934, under section 66(3) of the Indian Income-tax Act (XI of 1922).

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an assessment made on S. Lalchand for the year 1932-33 on income arising in that tax year in the concern, as an unregistered firm carrying on business as jewellers and silk merchants in the Hogg Market and at Lindsay Street in this city, and also at Shillong and Cawnpore. The Income-tax Officer had made an assessment for the year 1932-33 on a total income of Rs. 68,648, which income was reduced, on appeal, to the Assistant Commissioner, by a nominal amount, without, however, the Assistant Commissioner conceding the claim put forward by the assessee on the points which finally came before this Court.

For some years prior to the tax year, 1932-33, the Income-tax Officer had allowed registration of the assessee under the provisions of section 26A of the Income-tax Act and the assessee was treated as a firm constituted in the following manner:—

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|-------------------------|---|
| 1. Satramdas Dhalmall. | } Joint capitalist partners holding 7 annas share in the business ; |
| 2. Lalchand Dhalmall. | |
| 3. Lokemall Satramdas. | |
| 4. Hemandass Satramdas. | |
| 5. Chalaram Lokumall. | |
| 6. Harumall Lalchand. | |
| 7. Bhagchand Lokumall. | |

The first three of the last four persons had two annas and five pies share each, and Bhagchand had 1 anna and 9 pies share.

In the year with which we are concerned, however, the Income-tax Officer declined to renew the registration of these persons as a firm on the ground that the three first named persons were in themselves a firm and one firm in its corporate capacity could not be a partner in another firm. Consequently, there could not lawfully be a registration of that second firm, that is to say the larger firm. As an authority for that proposition, the case of *In the matter of Jai Dayal Madan Gopal* (1) was relied upon.

Two points have been argued before us by Mr. S. N. Banerjee on behalf of the assessee, namely (i) that the Commissioner of Income-tax was wrong in coming to the conclusion that there was no appeal against the decision of the Assistant Commissioner refusing to renew the registration of the persons, whose names I have given, as a firm and (ii) that the Income-tax authorities were wrong in taking the view that, in the circumstances of this case, the whole of the seven persons would not constitute a partnership which could be registered. As regards this last point Mr. Banerjee has conceded that it is not possible, in law, for one firm in its corporate capacity to enter into a partnership with one or more other persons in their individual capacity. He argued, however, that in a case such as the present, it must be taken that the effect, in law, of an agreement such as is contained in the partnership deed, dated the 22nd February, 1930, would be to make all the seven individuals partners in one firm and, therefore, a body which could be registered under section 26A of the Act. As regards that aspect of the matter, it is not necessary that we should express any definite opinion, because we are definitely of the view that the learned Commissioner of Income-tax was right in coming to the conclusion that, as the law stood at the time when this matter arose, there was no appeal from the decision of the Assistant Commissioner refusing to renew the registration of this firm.

Mr. Banerjee has argued that even under the terms of section 30 of the Income-tax Act, as they stood prior to the amendment in the year 1933, there was by implication a right of appeal against the decision of the Assistant Commissioner on the question of registration. The unamended section, so far as is material, reads as follows:—

Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order.

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Mr. Banerjee then referred us to the actual terms of section 23 itself and argued that the decision of the Income-tax Officer on the question of registration really affected the amount, if not the rate, of the tax payable by the assessee. Therefore, the opening words of sub-section (1) of section 30 were wide enough to confer a right of appeal against an order refusing registration. In the year 1933, section 30 (1) was amended and it now runs as follows:—

Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26A or to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 25A or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order.

The words "to register a firm under section 26A" were inserted by the Indian Income-tax (Second Amendment) Act of 1933. It must be taken that the legislature had in mind some definite purpose in inserting those words. The fact that section 30, sub-section (1) was so amended clearly indicates, in our view, that prior to the making of such amendment there was no right of appeal against the refusal of an Income-tax Officer to register a firm under section 26A. We are fortified in that view by two decisions of the High Court of Lahore, both of which are reported in Vol. VII of Indian Tax Cases. The first is at page 345 and is reported under title *Messrs. Bihari Lal Ghosi Ram v. The Commissioner of Income-tax, Punjab and N. W. F. Provinces* (1). That matter was decided by Mr. Justice Addison and Mr. Justice Sale. The judgment is very short, but very much to the point. It is in these words:—

There is no appearance for the petitioner. The answer to the question referred is in the negative, as an appeal is not provided for in section 30 of the Act from the refusal of the Income-tax Officer to grant registration. Let this reply go back. We understand that the law has since been amended to provide for such an appeal.

The second case is *Haji Ali Jan v. The Commissioner of Income-tax, Punjab and N. W. F. Provinces* (1). That matter came before the same learned Judges and the judgment begins at page 373 of the report. At page 374, their Lordships say:—

The second point urged is the question that in the circumstances of this case the petitioner should be declared a registered firm under section 26A of the Act. The Assistant Commissioner refused to entertain the appeal against an order refusing registration, as no such appeal is provided for by section 30 of the Act. It is true that the law has been altered by an amendment of the section made in November 1933; but we have held in other similar references under section 66 of the Income-tax Act, that according to section 30, as it stood before the amendment in November, 1933, no appeal lay against an order refusing registration under section 26A of the Act and no reference is, therefore, maintainable to this Court arising out of the rejection by the Income-tax authority of an application to register under section 26(A).

Then they referred to various authorities and discussed the matter at some length and finally, the learned Judges said—

The Income-tax Act is a special enactment which gives the authorities specific powers for purposes of assessment and these powers can only be attacked in the manner prescribed by the Act. Section 30 provides for appeals against certain specific orders and it necessarily follows in our view that orders passed under sections which are not mentioned in section 30 are not appealable and are therefore final in the sense that they cannot be reopened at any subsequent stage. We disagree with the proposition that an appeal against the final order of assessment justified the Income-tax Commissioner in re-opening by way of reference to us decisions relating to the method of assessment, which according to the scheme of the Act are final, merely because the assessment may be founded upon them. We adhere, therefore, to our previously expressed view that under section 30, before it was amended in November, 1933, it was not open to the Commissioner to refer to us under section 66 a question arising out of a refusal to register a firm under section 26A because the order was, at that time, not appealable under section 30, and therefore final.

These observations, in my opinion, dispose of the argument put forward by Mr. Banerjee whereby he suggested that, as there was an appeal against the amount under section 30 (1) as it originally stood, there was, by implication, an appeal against the refusal of the Income-tax Officer to register the assessee as a firm, because non-registration may have affected the amount of the assessment. We agree with the two decisions of the Lahore High Court

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to which I have just referred and we, accordingly, hold that prior to the amendment of section 30 (1) in the month of November, 1933, there was no right of appeal from the refusal on the part of the Income-tax Officer to register a firm under the provisions of section 26A of the Income-tax Act.

That disposes of this matter and it is not necessary that I should say anything more on the other point raised by Mr. Banerjee. The answer to the case stated by the learned Commissioner of Income-tax is that we agree with his decision that there was no right of appeal against the order of the Income-tax Officer.

As regards costs, 7 gold *mohurs* will be paid to the *vakil* instructing the two advocates, and to the two advocates such fees as have been actually paid.

DERBYSHIRE C. J. I agree.

Advocate for assessee : *H. N. Bhattacharjya.*

Advocate for Income-tax Department :
Rameshchandra Pal.

G. S.