

## SPECIAL BENCH.

*Before Sir Murray Coutts Trotter, Mr. Justice Krishnan  
and Mr. Justice Beasley.*

THE COMMISSIONER OF INCOME-TAX, MADRAS  
(REFERRING OFFICER),

1926,  
January 12.

v.

MOTHAY GANGA RAJU AND OTHERS (ASSEESSES).\*

*Income-tax Act (XI of 1922), sec. 66 (2)—Combined application by four assesses before Commissioner to state a case—Competency of—applicants, separately assessed—Separate application and separate fees, whether necessary—Combined application, whether can be regarded as valid on behalf of one of the applicants—Time for making the application, whether can be extended by the Commissioner.*

Where four persons, who were members of an undivided Hindu family, but subsequently became divided and were separately assessed to income-tax, applied to the Commissioner in one combined application on a single fee of one hundred rupees, to have a case stated to the High Court under section 66 (2) of the Income-tax Act (XI of 1922), and the applicants did not pay the additional fees or elect to have the application confined to one of them within time, as suggested by the Commissioner,

*Held*, (1) that it was not competent for four separately assessed persons to combine their applications in one document for a case to be stated by the Commissioner under section 66 (2) of the Act; that even assuming that they may, as, for instance, where the points to be raised are similar, their cases must be separately stated as they were separately assessed, and they must pay a separate fee of one hundred rupees for each assessment under the Act;

(2) that there was no proper application before the Commissioner for his taking action in the case of one of the applicants as the Commissioner had offered to do that and his offer was not accepted; and

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(3) that the Commissioner has no power under the Act to extend the time limited for making an application under section 66 (2) of the Act.

CASE stated under section 66 (2) of Act XI of 1922 by the Commissioner of Income-tax, Madras, in his letter No. 394 of 1924, dated 26th March 1925.

The following questions were stated by the Commissioner for the decision of the High Court:—

I. Whether four separate applications and deposits are necessary in this case for requiring the Commissioner to take action under section 66 (2) of the Act.

II. If the answer to the question (1) is in the affirmative, whether there was no proper application before the Commissioner for his taking action in the case of one of the applicants.

III. Whether there is any question of extending the period in this case and whether the Commissioner has no discretion in the matter.

IV. Whether section 34 of the Act covers a case where the Assessing Officer and the Commissioner in appeal held, after full investigation, that a certain income was not taxable in the hands of a particular individual but was to be included in the taxable income of a partnership of which he was a partner and it was subsequently held in proceedings relating to the partnership (to which the original assessee was not a party) that the partnership was not taxable on this amount and whether such assessment does not amount to an indirect review of the Commissioner's original proceedings not warranted by the Act.

V. Where, after dissolution of partnership, interest on the capital of the business up to date of dissolution was paid to retiring partners by another partner who took over the business, whether the partner who took over the business is not taxable on the amount of such interest under note 5 (b) (III) of the rule 19 printed at page 54 of the Manual and section 26 of the Act, and whether the fact that the payment could not be made till after dissolution makes it any the less a payment to a partner.

VI. Whether it is permissible to review considered proceedings of the Commissioner on the strength of other proceedings to which the original assessee was not a party.

VII. Whether the ruling of the Commissioner, that the share of profits of a joint concern transferred to an individual at

partition would not be income in his hands, does not govern the present case and whether the circumstances adverted to in paragraph 4 of the proceedings, assuming them to be correct, would render the said ruling inapplicable.

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*T. Ramachandra Rao* for the First Assessee.

*M. Patanjali Sastri* for the Referring Officer.

### JUDGMENT.

COURTS TROTTER, C.J.—On the direction of the learned Judge several separate questions have been framed for our determination. In our opinion the answers to the first three dispose of the whole matter and preclude us from going into the others. The first question is whether four applications are necessary in this case for taking action under section 66 (2) of the Act. That is the section which says that the Income tax Commissioner is to state a case when a proper application is made accompanied by the proper fee—which is Rs. 100 as matters stand. These applicants were four persons. They had once been an undivided family and, had they remained so, different considerations might arise, but they had in fact become separated and they were separately assessed. Nevertheless an attempt was made to have a case stated regarding them all on a single fee of Rs. 100. That, of course, was an impossible attitude to take up and as they were divided the result was that it was an application by four people each of whom, as my learned brother put it, can be deemed to have paid one-fourth of the prescribed fee. I have no sympathy with the applicants because they were expressly told, or their vakil was expressly told, the position by a letter from Mr. Strathie, the Commissioner, dated 13th February 1924. He points out,—

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“Only one sum of Rs. 100 is deposited. There were however separate assessments and four appellate orders. Under section 66 (2) each assessee must put in a separate application

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and each must deposit the prescribed fee of Rs. 100. I cannot therefore act on the present application."

Then he goes on,—

"If you wish me to deal with all the cases, will you please send four separate applications and an additional Rs. 300. If, however, you are willing that only one case should be dealt with and if you tell me with which case you wish me to proceed, I shall treat the Rs. 100 as having been received from that individual."

Nothing could be more reasonable than that and the assessee's vakil could have put the whole matter right by accepting one of those two alternatives. Instead of that the vakil sends an answer saying that, as all the questions were common to the four applicants, a reference in one will necessarily cover the case of all. Then he says he writes to his client. He must have known time was passing and in the result the time had elapsed before he communicated with his client and ascertained his decision as to which of the two alternatives he would accept. Thereupon Mr. Strathie wrote the letter of the 19th February in which he says that the time is gone for his reply, that the reply was in every case evasive (as indeed it was) and he declined to take any further action in the matter. Thereupon, penitent too late, the vakil writes a letter at once requesting that the Rs. 100 sent with the application should be treated as deposited on behalf of M. Narasimha Rao and that a reference may be made in his case leaving the other people over. That is the position and our answer to the question must be that the application as originally sent was defective and that the fee that accompanied even if the application was in order was insufficient. It is not competent for four separately assessed persons to combine their applications for a case stated of this sort in one document. But, even assuming that they may be, as for instance where the

points to be raised were the same, it is obvious that, as they were separately assessed, their cases must be separately stated and they must pay a separate fee of Rs. 100 for each separate assessment under the Act.

Then the next question is if the answer to question (i) is in the affirmative, as it has now been answered in the affirmative, whether there was no proper application before the Commissioner for his taking action in the case of one of the applicants. The answer is, No. He had offered to do that and his offer was not accepted.

The third question is whether there was any power to extend the period in this case or whether the Commissioner had no discretion in the matter. The answer is that the Statute fixes a time and it would be an obviously undesirable burden on the Income-tax Commissioner to put upon him the consideration of questions as to whether he should exercise discretion in the direction of leniency in one case and not in another. The Statute is express and there is no provision in it for any official or even for the Court to extend the time. Therefore, as our answers to the first three questions are what I have outlined, the remaining questions which, I suppose, raise the merits, we are unable to deal with. Rs. 150 will be allowed for costs of Government.

KRISHNAN, J.—I agree.

BEASLEY, J.—I agree.

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