

INCOME-TAX REFERENCE.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Madhavan Nair and Mr. Justice Varadachariar.

E. M. MUTHAPPA CHETTIAR, LEGAL REPRESENTATIVE
OF E. M. VISWANATHAM CHETTIAR (DECEASED),
PETITIONER,

1938,
October 26.

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS,
RESPONDENT.*

Indian Income-tax Act (XI of 1922), sec. 34—Income which has escaped assessment—Assessment of—Facts coming to knowledge of Income-tax Officer after one year from end of year of assessment, if can be relied upon by him for purpose of.

Where the Income-tax Officer has issued a notice under section 34 of the Indian Income-tax Act of 1922, he can, for the purpose of assessing income which has escaped assessment, rely on facts which come to his knowledge after one year from the end of the year of assessment.

There is nothing in section 34 that indicates that the inquiry is to be limited in time. To say that the Income-tax Officer shall be limited to facts discovered within a year of the year of assessment is to say something which the section does not say and which, if acted upon, would defeat the object of the section.

Rajendranath Mukherji v. Commissioner of Income-tax, Bengal(1) referred to.

IN the matter of the Indian Income-tax Act XI of 1922 and in the matter of the assessment of Messrs. E. M. Viswanatham Chettiar & Son, Pudukkottai.

K. Rajah Ayyar and R. Sundaralingam for assessee.
M. Patanjali Sastri for Commissioner of Income-tax.

* Original Petition No. 88 of 1937.
(1) (1933) I.L.R. 61 Cal. 285 (P.C.).

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The JUDGMENT of the Court was delivered by LEACH C.J.—On 18th November 1932 E. M. Viswanatham Chettiar was assessed to income-tax on an income of Rs. 8,277, in respect of the Tamil year ended 12th April 1932. The assessee was the managing member of an undivided Hindu family. The family carried on a money-lending business at Pudukkottai in British India, in the Federated Malay States, and in Burma. The year of assessment closed on 12th April 1933 and on 13th December 1933 the Income-tax Officer having reason to believe that income earned during the accounting period had escaped assessment issued a notice under section 34 of the Indian Income-tax Act. On 6th October 1934 the assessee filed a statement to the effect that no income had escaped assessment. On 25th February 1935 the Income-tax Officer issued a notice to the assessee under section 23 (2) to produce the evidence on which he proposed to rely. On 18th July 1936 the Income-tax Officer gave the assessee notice that on the 24th of that month he would commence an inquiry into the question of what income had escaped assessment and directed him to appear before him with all his account books and pass books. The inquiry in fact actually commenced on the 23rd July and continued on the 28th and the 29th when it was completed. On 30th July 1936 the Income-tax Officer re-assessed the assessee on an income of Rs. 55,000 which included the Rs. 8,277 already assessed.

The reasons for the delay which took place after the issue of the notice under section 34 on 13th December 1933 are apparent from the facts set out in the statement made by the Commissioner of Income-tax in making the reference now before us. Inquiries had to be made in Burma and there was lengthy correspondence with

the Income-tax officials in that country. It is clear that income which should have been assessed in the year of assessment did escape assessment. The assessee, however, contended before the Commissioner of Income-tax that the Income-tax Officer had no right in making the further assessment to take into consideration information which he had received after the expiration of one year from the end of the year of assessment. The Commissioner was asked to state a case on this point, but, as he refused, the assessee applied to this Court and the Commissioner was directed to refer the following question :

“ Where the Income-tax Officer has issued a notice under section 34, can he, for the purpose of assessing income which has escaped assessment, rely on facts which come to his knowledge after one year from the end of the year of assessment ? ”

As in our view the assessee wishes us to read into section 34 something which is not there I will set it out in full :

“ If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits, or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.”

It will be seen that all that the section says is that if for any reason income chargeable to income-tax has escaped assessment in any year or has been assessed

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at too low a rate the Income-tax Officer may within the time specified serve on the assessee the contemplated notice, and after having done so proceed to assess or re-assess such income. There is nothing in the section that indicates that the inquiry is to be limited in time.

The decision of the Privy Council in the case of *Rajendranath Mukherji v. Commissioner of Income-tax, Bengal*(1) has bearing on the question now before us. The assessee in that case were partners in a firm. After the year of assessment had expired but before the final assessment was made the Income-tax Officer discovered profits which had not been returned, and at a period considerably later than the end of the financial year made an assessment based on what he had discovered after its close. The appellants submitted that on a true construction of the Act an assessment must be completed within the year of assessment and, if it was not, the only remedy open to the Income-tax authorities was that provided by section 34. Their Lordships held that there was no limitation to the time in which the final assessment could be made and that as proceedings for the assessment of the assessee's income for a financial year were pending and no final assessment had been made, there was no question of income having escaped assessment within the meaning of section 34 so as to make the service of a notice within one year of the end of the year as therein required a condition of assessment.

In the present case, the notice required by section 34 was given within the period allowed and it was the duty of the Income-tax Officer to ascertain what income had in fact escaped assessment. The assessment was reopened so far as such income was concerned.

(1) (1933) I.L.R. 61 Cal. 285 (P.C.).

To say that the Income-tax Officer shall be limited to facts discovered within a year of the year of assessment is to say something which the section does not say and which, if acted upon, would defeat the object of the section. We have no hesitation in answering the reference in the affirmative.

The reference having been decided against the assessee he will pay the costs, Rs. 250.

A.S.V.

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Before Sir Lionel Leach, Chief Justice, Mr. Justice Madhavan Nair and Mr. Justice Varadachariar.

PR. AL. M. MUTHUKARUPPAN CHETTIAR,
PETITIONER,

1938,
October 27.

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS,
RESPONDENT.*

Indian Income-tax Act (XI of 1922), sec. 13—Scope of—Rejection of assessee's books under, merely on ground of assessee's method of accounting not appealing to Income-tax Officer—Permissibility—British Indian assessee with headquarters in British India and having foreign businesses—Books of, if must include details of his businesses abroad—Books relating to transactions in respect of business at headquarters correct and complete—Rejection of, on ground of their not including entries relating to his foreign businesses—Propriety of—Sec. 10 (2), proviso (a)—Deduction—Claim to—Particulars required by proviso—Necessity.

The assessee, who lived at a place in British India and had his headquarters there and who was a partner in money-lending firms carrying on business outside British India, was