MISCELLANEOUS CIVIL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

IN THE MATTER OF CHANDRA SEN JAINI.* 1928

January, 4.

Act No. XI of 1922 (*Indian Income-tax Act*), *sections* 22 *and* 23—*Income-tax—Notice under section* 22(4) *served on assessee after he has made a return—Non-compliance—Powers of income-tax officer.*

If an assessee has made a return in compliance with a notice under section 22 (2) of the Indian Income-tax Act, 1922, and thereafter a notice has been served upon him under section 22 (4) and the assessee has failed to comply with that notice, the Income-tax Officer is entitled to make an assessment under section 23(4) on account of that failure and he is not bound to proceed under section 23 (3). *Brijraj Ranglal* v. *Commissioner of Income-tax* (1), dissented from.

THIS was a reference made by the Commissioner of Income-tax under section 66 of the Indian Income-tax Act, 1922. The facts of the case are thus stated in the Commissioner's order :—

1. Lala Chandra Sen Jaini, a *Vaid* of Etawah, duly filed his return of income for the current year, stating his income to have been Rs. 300 from property and Rs. 3,000 from business, and adding that he kept no accounts, that his business was that of a *Vaid*, that he could not complete the form in detail, and that his return was an estimate.

2. When the Income-tax Officer came to make the assessment, he issued a combined notice under section 22 (4) and section 23 (2) of the Income-tax Act in the form attached (Appendix A), asking Lala Chandra Sen Jaini (1) to produce or cause to be produced his account books for the previous year and (2) to produce or cause to be produced evidence in support of his return.

*Miscellaneous Case No. 1027 of 1927.

(1) (1927) A.I.R., (Pat.), 390.

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3. The assessee appeared before the Income-tax Officer and stated on oath that he had no accounts or *bahikhatas* of any sort whatsoever, but, on being questioned, admitted that he did maintain a register in which were recorded the names of the persons to whom parcels were sent by post value-payable and also the amounts of money so realized. The Income-tax Officer asked the assessee to produce that register, no matter what its condition was, but the assessee declined to do so. The Income-tax Officer accordingly framed an assessment under section 23 (4) of the Income-tax Act.

4. The assessee subsequently presented an application under section 27 in the following terms :—

"Respectfully it is submitted that the applicant was required to file his account books, but since he kept no regular account books he could not file any. The applicant has been assessed to pay Rs. 904-11, which is very excessive. The applicant does not sell any medicines in the city. All his medicines are sent outside by means of parcels. A parcel journal is kept by the applicant, which will show the total amount of medicines sold by him.

The applicant never thought that this journal could afford a reasonable basis for assessment, but his legal advisers have advised him to file this journal. This journal contains all the sales by the applicant, and, by taking average profits per cent., a fairly accurate income of the applicant can be obtained.

It is therefore prayed that the court be pleased to reconsider the case in the light of the parcel journal and to assess the applicant accordingly."

The Income-tax Officer held that the condition postulated in section 27 was not fulfilled, i.e., that the assessee had not been prevented by sufficient cause from complying with the notice under section 22 (4), and rejected the petition.

5. The assessee appealed to the Assistant Commissioner of Income-tax, who rejected the appeal on the 11th of August, 1927.

6. About this time a case, *Brijraj Ranglal* v. *Commissioner of Income-tax,* was decided by the Patna High Court, which ruled that the notice under section 22 (4) of the Income-tax Act can only be issued before a return of income is filed and that failure to produce accounts in response to a notice issued after submission of a return does not render the assessee liable to an assessment under section 23 (4). The assessee noticed a report of this case in the newspapers of the 13th of August, 1927, and has presented a petition claiming that the assessment should have been made under section 23 (3) and not section 23 (4), and praying the Commissioner to set aside the assessment or to state a case to the High Court. Strictly speaking, the demand for a reference does not arise out of the appellate order. But the matter is of importance and, although the judgement of the Patna High Court has no force in this province, it is desirable that the point should be settled authoritatively.

7. The Commissioner, therefore, states a case on the following point :—

If an assessee has made a return in compliance with a notice under section 22 (2) of the Indian Income-tax Act, 1922, and thereafter a notice has been served upon him under section 22 (4) and the assessee has failed to comply with that notice, is the Income-tax Officer entitled to make an assessment under section 23(4) on account of that failure, or is he bound to proceed under section 23 (3)?

8. The Commissioner is of opinion that the ruling of the Patna High Court is not correct and the answer to the first part of the question is in the affirmative and to the second part in the negative.

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APPENDIX A.

Form B.

Notice under section 23, sub-section 2 (and section 22, sub-section 4) of the Indian Income-tax Act, XI of 1922.

(For use where a return has been made).

No.

Dated the 192

To

To enable me to test the correctness of the return of your income furnished by you under section 22, sub-section 1, / sub-section 2, / sub-section 3, of the Act for the year ending , I hereby require you to attend at my office at at on in person or by representative (and / or to produce or cause to be produced at the said place and time the accounts and documents specified overleaf *and any other evidence on which you may rely in support of the return*).

Wilful failure to comply with this notice will entail the forfeiture of your right of appeal under section 30 (1) of the Act and will render you liable to prosecution under section 51, sub-section (*d*) of the Act.

Income-tax Officer.

Particulars of accounts and documents :—

Upon this reference—

Munshi *Baleshwari Prasad*, for the applicant.

Pandit *Uma Shankar Bajpai*, for the Crown.

WALSH and BANERJI, JJ.—This is a case stated by the Income-tax Commissioner. The assessee, one Lala Chandra Sen Jaini, a *vaid* or physician of Etawah, filed a return of his income for the current year, stating that he kept no accounts and that his return was an estimate. The Income-tax Officer, presumably having reason to think that the assessee was not giving that attention to his return which, we hope, he gives to his patients,

served a double notice upon him, one under section 22 (4) requiring him to produce accounts and documents in support of his return, and another under section 23 (2) requiring him either to attend or to produce evidence in support of his return. The notice issued is headed "Form B". It is a double form calling upon the assessee to do two things; to produce documents to enable the correctness of the return to be tested and to attend and give any evidence the assessee may desire to give. This double form, which is a useful and practical way of combining two stages into one, is headed "Form B". We have been unable to ascertain, either from the Manual in use in these provinces, or from the gentlemen who have argued the case before us, whether it is a statutory form or merely a form with no greater authority than that of the department from which it issues. But it is no without significance that one of its sub-titles is in the following terms:—"For use where a return has been made". The question whether a double form like this, and the practice of combining two stages into one, is strictly lawful is not before us. It certainly ought to be. It must be a great saving of time to an assessee, especially if he is honest and wants to be truly assessed and to pay the proper proportion of his contribution to public funds, and it must also be of great advantage to the taxing authorities, to have one comprehensive and final stage of inquiry where an assessee, whose return has been challenged, can produce all his documents in support of his return and give any evidence on which he relies. The assessee complied with the notice which required him to attend under section 23, presumably because he was advised that if he did not he would have the very assessment made against him of which he complains, but he did not comply with the part of the notice requiring him to produce his documents, apparently relying upon an authority of the Patna High Court, which he was advised would enable him to withhold them from the taxing authorities. But the result of his attendance

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to give evidence was to show that his statement in his original return was a falsehood. He had said that he kept no accounts. He did. When he was put upon oath, he admitted that he kept a register with the names of his customers and the amounts realized. He made the feeble and obviously dishonest excuse that he had not produced the register because the accounts were not clearly entered. It is to be observed that he was not called upon to produce accounts which were clearly entered, or anything which he might, as the sole judge of the matter, consider worthy of being produced, but he was called upon to produce such accounts and documents as he had, it being immaterial whether the accounts were clear or not or whether they were what would be considered regular and perfectly kept accounts; he finally said that he did not wish to produce them. He was thereupon assessed by the Income-tax Officer to the best of his judgement under section 23 (4). The question is whether the Income-tax Officer had jurisdiction to do that. It seems to us that if he had not, the careful provisions of sections 22 and 23, for the purpose of preventing fraud and concealment, would be useless and that the machinery provided for the purpose of making people pay their real quota would break down. The machinery provided by these sections for extracting a reasonable contribution out of assessees in default is aimed precisely at the conduct of which this assessee has been guilty, but we have to see whether his dishonest attempts to evade his liability are protected by the law. The sub-section in question, section 23 (4), is as follows :—

"If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgement".

That sub-section contemplates three contingencies. The first, the failure to make a return at all; the second, the failure to comply with a notice requiring production of accounts or documents required by the Income-tax Officer; and the third, the failure to attend at the Income-tax Officer's office, or to produce evidence on which the assessee relies. In each of these three cases the assessee is a person in default, and he can only become in default by a deliberate breach of an express provision to which the penal section which we have just cited in each case refers. It must be admitted that the assessee in this case failed to comply with the terms of the notice issued under sub-section (4) of section 22, because he failed to produce this register which was the important document which he had. By a curiously tortuous form of argument it is suggested that this default on his part does not bring into operation section 23, sub-section (4), because it does not constitute a breach of sub-section (4) of section 22. For the purpose of that argument it is necessary to introduce into section 22 (4) an express or implied provision that a notice requiring an assessee to produce accounts and documents can only be served before he has made a return, and, if served after he has made a return, is illegal. To our minds this is a far-fetched suggestion, but as it has been accepted in one High Court in India and is relied upon in this case, it is necessary to examine it with some care. It is impossible to deny that the effect of such an interpretation is to make a great part of these sections unworkable, and the view seems to us completely out of touch with the realities of the question to be determined. There is nothing in sub-section (4) imposing any limitation upon the time when, or the conditions under which, the notice there mentioned is to be served. What possible object an Income-tax Officer can serve by sending a notice to an assessee to produce his accounts and documents before

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such assessee has made any return at all, it is difficult to follow. Why should the legislature have intended, without using express and clear language, to prevent the Income-tax Officer from calling upon an assessee to produce accounts and documents under this sub-section after he has made his return? The object of his doing so is made clear by the next section. If the Income-tax Officer is satisfied that a return is correct, he is directed to make the assessment under sub-section (1). How is he to be satisfied, if he has any suspicion or grounds for dissatisfaction, unless, when he sees the return and has some materials before him for forming a judgement, he can ask to see the books of the assessee? *A fortiori*, unless he is to obtain private information from secret and possibly unreliable sources, how is he to form a belief under section 23, sub-section (2), that the return made under section 22 is incorrect or incomplete, unless at least he can inform himself by the obvious and elementary method of calling for the books? It is to be observed that the notice which he may serve on the person who made the return under section 23 (2) is only to be served when the officer has reason to believe that the return made is incorrect or incomplete; and unless the return is, on the face of it, ridiculous or the Income-tax Officer has secret information, it is impossible for him to form any honest belief on the subject at all, unless he can secure some materials. It seems to us, therefore, that a great part of the duties of the Income-tax Officer would be rendered practically unworkable if it were to be held that sub-section (4) of section 22 could only be worked before a return had been made. The Government Advocate made a valuable criticism upon the argument. The machinery is slightly different where there is a company and where there is an individual assessee. In the case of a company, under sub-section (1), the principal officer is required to prepare and furnish every year on or before

the 15th day of June in each year a return, whereas the return under sub-section (2) required of an individual is only to be made in response to a notice served upon him by the Income-tax Officer to make such return within a specified period. It follows, therefore, that if the argument put forward were to be accepted, the words "before the 15th June in each year" would have to be inserted in the case of the principal officer of any company in sub-section (4) of section 22, and that, although there is not a word in the Statute to suggest it, if the Income-tax Officer did not call upon every company in his jurisdiction before the 15th of June to produce accounts and documents required by him—a most burdensome requisition—he would, after such company had made its return, be prevented for the rest of that fiscal year from doing so.

On this matter we have no hesitation in quoting from the excellent Commentary of Mr. Vishvanatha Sastri, a Vakil of Madras, the author of The Law and Practice of Income-tax, published in 1922, dealing with this very question of the evidence in support of a return under section 22. He expresses this opinion:—

"The Income-tax Officer is empowered to call upon the assessee (whether or not he has made a return) to produce such documents and accounts as he may require, within the period specified in the notice requiring their production. Sub-section (4) prevents the Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the accounting period. There is, however, no such limitation upon the power to call for documents. In the case of trades and business, the Income-tax Officers require, in addition to the profit and loss account, a copy of the balance-sheet. Provided the return which has been made is a correct one, the submission of these documents cannot prove detrimental to the tax-payer".

We agree with that opinion. The matter seems to us to be simple, and really it would seem almost unarguable, if it were not for the decision arrived at by the Patna

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High Court set out in Appendix (C) to the case.* We respectfully differ from that decision and find it somewhat difficult to follow. The fallacy, if we may say so, is based upon the assumption which, in our view, there is nothing to justify, that a notice under section 22 (4) can only be given to a person who has not made a return, and that if it is given after a return has been filed, such a notice is illegal. One of the reasons given in the judgement is that the words, "having made a return", which occur in the third case of default in section 23 (4), create some antithesis between such default and the preceding default of failing to comply with a notice under section 22 (4). We cannot follow this. It is not a case where any antithesis is required. To our minds the words merely mean what they say, and have no other object than that which the Government Advocate point ed out, of emphasizing the fact that the third default, namely, failure to comply with sub-section (2) of section 23, can only be made by a person who has already made a return, because it is only such a person who can be served with a notice in accordance with sub-section (2) of section 23. It is wrong to say that they are meaningless. Many reasons might be given why the draftsman thought it right to insert them where they are. One reason is this, that an Income-tax Officer may have honest reason to believe that the return which he has received has been made by the assessee and is incorrect or incomplete, when the return was not in fact made by the assessee at all, and although the Income-tax Officer might have honest reason to believe that it was, and might legitimately serve on such person a notice under sub-section (2) of section 23, such person would have a complete answer to an assessment against him to the best of the Income-tax Officer's judgement under sub-section (4) by

*Vide *Brijraj Ranglal* v. *Commissioner of Income-tax*, (1927) A.I.R., (Pat.), 390.

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proving that he had not made the return. No doubt this illustration is an extravagant one in the sense that it is unlikely to occur, but in a country in which false documents are so common and false charges are so frequently made out of enmity, it may well have been considered quite possible that a discharged servant or some other enemy might deliberately send in a false return purporting to be by an assessee, which would appear to be incomplete or incorrect on the face of it, for the purpose of inducing the Income-tax Officer to give him what is called in this country "Dik". At any rate, if such a case should occur, the language which we have just cited is appropriate thereto. We, therefore, answer the first part of the question in the affirmative and the second in the negative, agreeing with the Commissioner. The assessee must pay the costs. We fix the fee at Rs. 150.

REVISIONAL CRIMINAL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

EMPEROR *v.* KISHAN NARAIN.*

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January, 6.

Criminal Procedure Code, section 107—*Security for keeping the peace—Order passed on the admission of the accused that he is willing to give security.*

Where a person against whom a notice is issued under section 107 of the Code of Civil Procedure consents to give security, there is no reason why the Magistrate concerned should not proceed to pass orders against him without further inquiry, provided that the Magistrate is satisfied that such person fully understood the meaning of the notice and that he was at liberty to show cause against it if he wished to do so. *Emperor* v. *Ghariba* (1), followed. *Palaniappa Asary* v. *Emperor* (2) and *Jagdat Tewari* v. *Emperor* (3), referred to.

*Criminal Revision No. 775 of 1927, by the Local Government, from an order of Shambhu Nath Dube, Sessions Judge of Bareilly, dated the 8th of September, 1927.

(1) (1923) I.L.R., 46 All., 109. (2) (1910) I.L.R., 34 Mad., 139.
(3) (1920) 54 Indian Cases, 784.