

MISCELLANEOUS CIVIL

1933
October 27

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet
BEHARI LAL CHATTERJI (APPLICANT) *v.* COMMISSIONER
OF INCOME TAX (OPPOSITE PARTY)*

Income-tax Act (XI of 1922), sections 22, 23, 29—Power of Income-tax Officer under section 23(4) to determine amount of tax—“Assessment”, meaning of—Return of income sent, but without signature or verification—Income-tax Officer can forthwith make assessment to the best of his judgment—No further notice necessary.

It is not correct to think that in every case where section 23(4) of the Income-tax Act is to apply, there must be a non-compliance with section 22(4). An assessment made under section 23(4) is not necessarily illegal if it was made without issuing a notice under section 22(4).

The word “assessment” in section 23(4) is to be interpreted in consonance with the definition of the word “assessee” in section 2 (2), and it means determining the total taxable income and the sum payable on it as tax. Therefore, although sub-section (4) of section 23 does not specifically state, as sub-sections (1) and (3) do, that the Income-tax Officer shall determine the sum payable by the assessee, he has power to do so, as he has power to make the “assessment”. Hence a notice of demand can be validly issued under section 29, when an assessment has been made under section 23(4).

A return of income made by an assessee under section 22(2), without any signature or verification, is not a proper return, and the Income-tax Officer may treat it as being no return at all and proceed to make an assessment to the best of his judgment under section 23(4). In this matter no analogy can be drawn from the case of a plaint filed without signature or without verification. The failure to sign and verify the return is not a matter which comes under section 23(2), as the incompleteness contemplated by that sub-section is of the kind which requires evidence to be produced; no notice, therefore, is required under section 23(2) in such a case before the assessment is made under section 23(4).

Messrs. *P. L. Banerji* and *H. P. Sen*, for the applicant.
Mr. K. Verma, for the opposite party.

NIAMAT-ULLAH and BENNET, JJ.:—This is an income-tax reference by the Commissioner of Income-tax to this

Court. The following three questions have been referred to this Court :

“(1) Whether the assessment made without issuing a notice under section 22(4) is not an assessment to the best of the judgment as contemplated by section 23(4) and is illegal?

“(2) Whether the issue of a notice of demand under section 29 with respect to an assessment made under sub-section (4) of section 23, wherein no power to determine the sum payable by the assessee on the basis of such assessment has been conferred on an Income-tax Officer, is illegal?

“(3) Whether a return made under section 22(2) on the form supplied to the assessee by the Income-tax Officer, with the omission of signatures, is an incomplete return contemplated by section 23(2) and the assessment in such case could not be made without issue of a notice under this section, viz. 23(2)?”

The facts of the case, as stated, are that a notice under section 22(2) of the Income-tax Act was sent to the assessee, and time was extended; and in compliance with that notice he sent a return, which was not signed on any of its pages and was not verified. The Income-tax Officer held that no return at all had been sent, and therefore he made a best judgment assessment under section 23(4).

The first question which has been referred suggests that there is some necessary connection between section 22(4) and section 23(4). Section 23(4) applies where there is a failure to make a return under section 22(1) or (2), or where there is a failure to comply with all the terms of a notice issued under sub-section (4) of section 22. It is not correct therefore to assume that in every case where section 23(4) is to apply, there must be a non-compliance with section 22(4).

The next question is framed on the point that in section 23(4) the final words of the sub-section are that “the Income-tax Officer shall make the assessment to the

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best of his judgment." In sub-sections (1) and (3) of section 23 the language used is slightly different, and it states that the Income-tax Officer shall "assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return", or in the case of sub-section (3), "of such assessment". The learned counsel desires to draw a distinction between the language of the three sub-sections, and he argues that as sub-section (4) does not specifically state that the Income-tax Officer shall determine the sum payable by the assessee, therefore the Income-tax Officer has no power to determine the sum payable. In other words, he argues that sub-section (4) only empowers the Income-tax Officer to ascertain the amount of taxable income and does not empower him to calculate the amount of tax payable by the assessee. For this proposition the learned counsel referred to the case, *In the matter of Chhotey Lal* (1). In that case the question at issue was whether the notice issued under section 34 in regard to super-tax, on the ground that some income had escaped assessment, was valid. A Bench of this Court held that the words "had escaped assessment" could not apply, because the whole income had been assessed to income-tax, although it had not been assessed to super-tax. The Bench, however, did hold that another portion of section 34 could apply, which refers to income which "has been assessed at too low a rate". In the course of the judgment the Bench made a reference to the meaning of the words "assessed" and "assessment"; and the learned counsel contends that what was stated in that ruling should be applied in the present case. But there are two reasons why we cannot accept his argument. In the first place, as pointed out, the question before that Bench was one of super-tax, and of the meaning of the words "escaped assessment" in section 34. In the second place, the Bench, by some oversight, did not refer to the definition of the word "assessee" in section 2(2) of the Act. In this definition

(1) [1931] A.L.J. 1109.

it is stated that "assessee" means "a person by whom income-tax is payable." We would naturally interpret the word "assessment" in consonance with that definition; and we consider that the word "assessment" in section 23(4) means determining the total taxable income and the sum payable on it. Therefore we consider that a notice could be validly issued under section 29, when the Income-tax Officer had made a best judgment assessment under section 23(4).

The last question concerns the return which was sent by the assessee, without being signed or verified. The learned counsel referred to the plaint in a civil suit and argued that under certain rulings a plaint, although not in regular form, could be taken as of some effect. One of these rulings is *Basdeo v. John Smidt* (1). There the point was taken for the first time in appeal that the plaint had not been duly signed by the plaintiff or by any one authorised by him. It was held that this did not necessarily make the plaint void and that the defect might be taken to have been waived by the defendant and might have been cured by amendment at any stage of the suit and was not a ground for interference in appeal. In *Shib Deo Misra v. Ram Prasad* (2) it was held that a plaint which had been filed without due verification could be verified at a later stage of the suit, even after the expiry of limitation. We do not consider that any analogy can be drawn from a plaint. The specific section in the Income-tax Act dealing with the return in question is as follows: "22(2). In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and *verified in the prescribed manner* setting forth (along with such other particulars as may

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(1) (1899) I.L.R., 22 All., 55.

(2) (1924) I.L.R., 46 All., 637

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be provided for in the notice) his total income during the previous year." It is a necessary ingredient of the return that it should be in the prescribed form and should be verified in the prescribed manner. It is provided in section 52 of the Income-tax Act that "If a person makes a statement in a verification . . . which is false", he may be prosecuted under section 177 of the Indian Penal Code. Importance, therefore, is attached to the verification and signature on the return. The question has been before this Court on previous occasions, and as recently as the 18th of August, 1933, in Miscellaneous Case No. 387 of 1932, Application of Mathura Das Chunni Lal, assessee, this Bench held that there was a failure on the part of the assessee to submit a proper return where the return did not bear verification required by the Act and did not bear the signature of the assessee, and further that this failure justified the best judgment assessment under section 23(4) by the Income-tax Officer. There is another case, *In the matter of Abhey Ram Chunni Lal* (1). In this there was a failure to make a return of income in regard of the different branches of the business of the assessee, and it was held that the assessee had deliberately failed to comply with section 22(2) and that the Income-tax Officer was entitled to make a best judgment assessment under section 23(4).

It was further argued by the learned counsel that the failure to sign and verify the return is a matter which will come under section 23(2). That sub-section refers to the case where "the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete." The learned counsel argued that in the present case the return was incomplete, because the signature and verification were lacking; but we do not consider that the word "incomplete" in section 23(2) can cover the defect in the present case, because in that sub-section it is laid down that the Income-tax Officer should send notice to the assessee requiring him to produce

(1) [1933] A.L.J., 49.

evidence on the point. Now evidence would not be required for the purpose of adding the verification or the signature to a return. Therefore the incompleteness which is contemplated by the sub-section is not the incompleteness which arises from non-verification and want of signature. For the reasons given above we consider that the defects in the return in the present case do not bring the return under section 23(2), and therefore the answer to the last question is against the assessee.

As the case for the assessee fails on all points, we direct that the assessee should pay costs, including the costs to the department, which we assess at Rs.150. Let a copy of our order be sent to the Income-tax Commissioner.

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Before Mr. Justice Young

IN THE MATTER OF THE DEHRA DUN-MUSSOORIE
ELECTRIC TRAMWAY Co., LTD.*

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Liquidation of company—Creditors' claims paid in full up to date of winding up—Interest subsequent to date of winding up—Priority of payment of interest over payment to preferential shareholders—Rate of interest.

Where, in the winding up of a company, the creditors' claims have been paid in full up to the date of the winding up, and there is a surplus, the creditors are entitled to be paid interest, from the date of the winding up to the date of payment, in priority over the claims of the preferential shareholders.

Such interest was allowed at the rate of 6 per cent. per annum to those creditors whose contracts carried that or a higher rate of interest, and at the rate of 4 per cent. per annum to creditors in whose cases there had been no contract for interest.

Dr. N. P. Asthana and Mr. Bhagwati Shankar, for the official liquidators.

Messrs. S. K. Dar and M. N. Raina, for the creditors.

YOUNG, J.:—This is a report by the Official Liquidators of the Dehra Dun-Mussoorie Electric Tramway Company, Limited (in liquidation) with regard to the disposal of a surplus in their hands after paying the