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jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. We do not think it necessary to decide definitely in this case whether an appeal or a revision lies from the order of the lower court, as in the view taken by us, Mahabir Singh has no case either for appeal or for revision. Nothing has been urged which weakens the force of the judgment of the learned Subordinate Judge, or inclines us to sustain the appeal or the revision.

Raza and Smith, JJ.

The result is that we dismiss the appeal, and also the revision filed by Mahabir Singh. The appeal is dismissed with costs. We pass no orders as to costs in the revision.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice H. G. Smith

HAJI ABDUL QAYUM & CO., FYZABAD (APPLICANT) *v.* THE COMMISSIONER OF INCOME TAX, UNITED PROVINCES (OPPISITE PARTY)*

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Income Tax Act (XI of 1922), sections 23(4), 27, 30(1) and 31—Refusal of Income Tax Officer to make fresh assessment under section 27—Appeal to Assistant Commissioner, Income Tax—Order in appeal, whether one under section 31—Reference to High Court, when lies—Income Tax Officer, whether can make assessment arbitrarily.

When an Income Tax Officer refuses to make a fresh assessment under section 27 and rightly or wrongly there is an appeal to the Assistant Commissioner of Income Tax and a decision by him, there is certainly an order made under section 31 of the Act, and a reference can be made to the High Court. *A. K. A. C. T. V. V. Chettyar* v. *The Commissioner of Income Tax* (1), referred to.

*Application (under section 66 of the Indian Income Tax Act) No. 2 of 1932, against the order of Wali Mohammad, Commissioner of Income Tax Central and United Provinces, Lucknow, dated the 9th of May, 1932.

(1) (1928) I.L.R. 6 Rang., 652.

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An Income Tax Officer does not possess absolutely arbitrary authority to assess at any figure he likes, and although he is not bound by strict judicial principles, he should be guided by the rules of justice, equity and good conscience. *Muhammad Hayat Haji Muhammad Sardar* v. *The Commissioner of Income Tax, Punjab* (1), relied upon.

When it is held as a fact by the Commissioner of Income Tax that the assessment in dispute is neither arbitrary, nor unreasonable, nor unjust there is no reason whatever to require the Commissioner of Income Tax to state a case and refer it to the High Court.

Mr. *M. Wasim,* for the applicant.

RAZA and SMITH, JJ.:—This is an application under section 66(3) of the Indian Income Tax Act (XI of 1922).

The applicant is one H. Abdul Qayum of Fyzabad city, who does business at present under the designation of Abdul Qayum & Co., the business at present, we are given to understand, is concerned with motor accessories, crude oil and cigarettes. The firm was previously known as Abdul Samad, Abdul Qayum, but the designation was changed a year or two ago. The assessments relating to the firm date from the year 1923-24, when the assessment was Rs.131-3-0. The assessments were progressively enhanced in the succeeding years, till in 1930-31 the assessment was Rs.950, on an estimated profit of Rs.18,240. In the following year, however, which is the year to which the present application relates, the assessment was raised to a total amount of Rs.5,092-15-0, on an estimated profit of Rs.35,600, the total assessment being made up of Rs.4,527-1-0, plus surcharge and super-tax to the extent of Rs.565-14-0. No return of income and profit was ever made, and the assessments were accordingly made throughout under section 23, sub-clause (4) of the Act.

Being dissatisfied with the assessment made for the year 1931-32 (that is to say the year in dispute), the assessee made an application to the Income Tax Officer

(1) (1930) I.L.R., 12 Lah., 129.

under section 27 of the Act, and that application was decided on the 12th of September, 1931. The Income Tax Officer found no reason to re-open the case, and rejected the application.

Thereafter on the 8th of October, 1931, the assessee appealed to the Assistant Commissioner under section 30(1) of the Act. That appeal was dismissed by the Assistant Commissioner of Income Tax on the merits on the 28th of January, 1932. The assessee thereupon applied to the learned Commissioner of Income Tax under sections 33 and 66(2) of the Act, raising a number of points which were dealt with in detail by the learned Commissioner of Income Tax. In the end, he held that no order had been made under section 31 of the Act, and that no reference lies to this Court. The application for a reference to this Court was accordingly rejected. The assessee, thereupon, came here under section 66(3) of the Act.

Raza and Smith, JJ.

We have heard the applicant's learned counsel at length. The application takes many points, and sets forth various questions of law which are said to arise in connection with the matter that is before us. In the end, however, the learned counsel for the applicant confined himself to two points only:

(1) that the Commissioner of Income Tax was wrong in taking the view that no appeal lay to the Assistant Commissioner under section 30 of the Act, and "that there was no order under section 31, and no reference lies to the High Court."

(2) in making the assessment under section 23(4) "to the best of his judgment," the Income Tax Officer does not possess arbitrary authority to assess at any figure he likes.

We can see no force in the first of the two above points inasmuch as there was, in fact, an appeal to the Assistant Commissioner of Income Tax, and it was heard by him and decided by him on the merits.

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Raza and Smith, JJ.

Whether having regard to the proviso to section 30(1) of the Act, an appeal really lay to the Assistant Commissioner is a point which we do not think it necessary elaborately to discuss, there is authority in a ruling reported in *A. K. A. C. T. V. V. Chettyar* v. *The Commissioner of Income Tax* (1) for the proposition that when an Income Tax Officer refuses to make a fresh assessment under section 27, as was the case here, an appeal does lie to the Assistant Commissioner under section 30(1) of the Act. However that may be, there was, as we have said already, an appeal to the Assistant Commissioner, who decided it on the merits. Since, rightly or wrongly, there was an appeal to the Assistant Commissioner of Income Tax, and a decision by him, there was certainly an order made under section 31 of the Act, and to that extent we differ from what was said by the learned Commissioner of Income Tax at the end of his order, that is to say, we think that there was certainly an order made by the Assistant Commissioner of Income Tax under section 31 of the Act, and that, therefore, the learned Commissioner of Income Tax was wrong in thinking that there was no such order, and that on that ground no reference could be made to this Court.

There remains only the second point set forth above. We do not think it necessary to require the Commissioner to state a case on the point whether an Income Tax Officer is devoid of arbitrary authority to make an assessment at any figure he likes. This is a very general and abstract proposition which we do not think requires to be referred to this Court, especially in the special circumstances of this present matter. It was held in a Full Bench ruling of the Lahore High Court in *Muhammad Hayat Haji Muhammad Sardar* v. *The Commissioner of Income-tax, Punjab* (2), that an Income Tax Officer does not possess absolutely arbitrary authority to assess at any figure he likes, and that although he is

(1) (1928) I.L.R., 6 Rang., 652. (2) (1930) I.L.R., 12 Lah., 129.

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not bound by strict judicial principles, he should be guided by the rules of justice, equity and good conscience.

We need hardly say that this proposition of law appears to us to be incontrovertible, but we do not see that any good purpose will be served by our calling upon the Commissioner of Income Tax to state a case and refer it to us with a view to our giving a judicial pronouncement of our own on this point. Our reason is that as far as can be seen the Income Tax Officer made the assessment in dispute to the best of his judgment, having regard to the fact that the assessee had submitted no accounts. The Income Tax Officer, in making the assessment, said in his assessment note, recorded on the 22nd of June, 1931:

Raza and Smith, JJ.

> "They are the biggest general merchants and dealers in motor requisites in this city and have a sort of control over the imports in this line. I have made thorough inquiries about their income during the previous year."

The learned Commissioner of Income Tax said in his order of the 9th May, 1932:

> "It is to be clearly understood that the assessment is neither arbitrary, nor unreasonable, much less unjust."

He went on to quote the passage that we have ourselves just quoted from the assessment note of the Income Tax Officer. In these circumstances, it is clear that if we in the end gave a pronouncement along the lines desired by the applicant, that is to say, that an Income Tax Officer does not possess entirely arbitrary authority to assess at any figure he likes, any such decision on that point of law would be of no avail to the applicant, since it has been held as a fact by the Commissioner of Income Tax that the assessment now in dispute was neither arbitrary, nor unreasonable, nor unjust. In these circumstances we see no reason what-

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ever to require the Commissioner of Income Tax to state a case and refer it to this Court, and we accordingly reject this application.

The application was heard by us *ex parte* under the rules of this Court, and so no question of costs arises.

Application rejected.

REVISIONAL CIVIL

Before Mr. Justice Muhammad Raza and Mr. Justice J. J. W. Allsop

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MUNSHI RAGHUBIR SINGH AND OTHERS (APPLICANTS) v. RANI RAJESHWARI DEVI (OPPOSITE PARTY)*

Civil Procedure Code (Act V of 1908), section 152—Amendment of decree—Mortgage suit—Defendant not appearing to contest—Preliminary decree for sale giving right to obtain personal decree under Order XXXIV, rule 6, Civil Procedure Code—Decree becoming final—Sale of property—Decree-holder applying for personal decree for balance—Defendant, whether can ask for amendment of decree so that decree-holder may have no right to a personal decree—Evidence Act (I of 1872), section 114—Presumption about legality and correctness of court's proceedings.

A presumption arises under section 114 of the Evidence Act as to legality and correctness of a court's proceedings.

Under section 152 of the Code of Civil Procedure, there is no right in any party to have a clerical or arithmetical mistake corrected. The matter is left to the discretion of the court and the discretion has to be exercised in view of the peculiar facts of each case.

Where in a suit on the basis of a mortgage-deed of certain trust properties executed by the trustees, the defendants (trustees) did not appear to contest the suit and a preliminary decree for sale was passed in the form laid down in No. 4 of Appendix D of the Code of Civil Procedure and they preferred no appeal from that decree and allowed it to become final, the defendants were not entitled, after the property had been sold and the decree-holder became entitled to apply for a personal

*Section 115, Application No. 54 of 1932, against the order of Babu Gauri Shankar Varma, Subordinate Judge of Sitapur, dated the 30th of March, 1932.