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date of default is not a reasonable compensation. The parties have left the point altogether in the dark; no evidence of what is the prevailing rate of interest in contracts of this kind has been adduced, nor has any evidence been given as to what is the reasonable compensation ordinarily allowed in the vicinity in respect of defaults committed by a debtor in not punctually paying the amounts of rents and royalties mentioned in the lease. We cannot, therefore, in this case regard the plaintiffs' claim for increased rate of interest as unreasonable compensation for breach of the contract committed by the lessor.

[The remainder of the judgment is not material to this report. The terms on which the appeal was eventually disposed of, were settled by consent of the parties].

REFERENCE UNDER THE INCOME-TAX ACT.

Before Dawson Miller, C. J. and Foster, J.

SACHCHIDANANDA SINHA.

v.

COMMISSIONER OF INCOME-TAX,
BIHAR AND ORISSA. *

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June, 19.

Income-tax Act, 1922 (Act XI of 1922), section 33
"reasonable opportunity".

Where an order is made by the Commissioner under section 33 of the Income-tax Act, 1922, in circumstances where he is really exercising the duties of the income-tax officer under section 23(2) and is, in effect, calling upon the assessee to give evidence to support the original return made by him, sufficient time should be given to the assessee to afford him a reasonable opportunity of placing his case before the Commissioner. In the present case a week's time was held to be insufficient.

* Miscellaneous Judicial Case No. 37 of 1924.

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The facts of the case material to this report are stated in the following order made by Jwala Prasad and Kulwant Sahay, JJ., dated the 18th March 1924, calling upon the Income-tax Commissioner to state a case :—

This is an application under section 66 of the Income-tax Act, 1922, praying that the Commissioner of Income-tax be called upon to state a case and refer it to the High Court for determination.

It appears that the applicant, the Hon'ble Mr. S. Sinha, was assessed with income-tax for the year 1923-24 and the usual assessment form was issued on the 25th of May, 1923. That assessment was principally upon the salary of the applicant as Member of the Executive Council, Bihar and Orissa, and was made by the Income-tax Officer through whose authority and under whose signature the assessment form was issued.

On the 12th October, 1923, the Commissioner of Income-tax wrote to Mr. Sinha as follows :—

"I have the honour to say that your return of income for the year 1922-23 does not show any income from house property which I understand you possess. If my information is correct, I would request you to furnish particulars of its *bona fide* annual value, by October 26th."

Mr. Sinha thought that the house referred to by the Commissioner was his newly built house at Patna, and in his letter of the 14th October, 1923, he explained the omission of house property from the return submitted by him as being due to the fact that he had removed to his new house only on the 1st of April, 1923, previous to which he was occupying a rented house.

The Commissioner in his letter of the 23rd October, 1923, pointed out that the properties referred to in his previous letter were Mr. Sinha's two houses: one at Allahabad and another in or near Simla. To this Mr. Sinha replied on the 6th of November, 1923, that he possessed a house at Allahabad (No. 7, Elgin Road) in which his mother and other members of his family had been residing since 1898; that his son has another house at Solon which he has inherited from his maternal grandfather. Mr. Sinha in this letter further offered to supply any additional information that the Commissioner might require.

On the 13th December, 1923, the Commissioner of Income-tax wrote to Mr. Sinha stating that the annual letting value of his house at 7, Elgin Road, Allahabad, was ascertained to be Rs. 2,400, and asked him to show cause under section 33 of the Indian Income-tax Act, 1922, by the 21st December, why the said sum of Rs. 2,400 should not be added to Mr. Sinha's income for the purpose of assessment to income-tax and super-tax. In reply to this, on the 20th December 1923 Mr. Sinha while "on tour," as noted in his letter, wrote to the Commissioner stating that he was under the impression that all the payments in connection with his house at Allahabad were made at Allahabad but if the assessment of his Allahabad house was to be made at Patna he would have no objection to his being assessed on the value of that house. He further stated he

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would be returning to Patna on the 2nd January, 1924, when he would write to the Commissioner of Income-tax definitely on the subject and that in the meantime he had written to his nephew at Allahabad making enquiries about the matter.

Accordingly, on his return to Patna, Mr. Sinha wrote to the Commissioner on the 19th January, 1924, as follows:—

"In continuation of my letter sent to you from 9/3, Hungerford Street, Calcutta, dated the 20th December, 1923, I now write to say as the results of enquiries made by me that no assessment has been recently made of my Allahabad house for the purpose of income-tax. While this is so, you will permit me to add that looking into the law and taking into consideration the facts and circumstances of the case, which are not yet fully known to you, I am not quite sure that my Allahabad house is liable to assessment. In the circumstances, it seems to me that it would be in the interest of justice if you kindly give me an opportunity of stating my views before you pass final orders on the subject."

To this the Commissioner of Income-tax replied, as per his letter of the 23rd January, 1924, stating that he had already passed final orders in his case on 22nd December, 1923, and that he had no power to review the order already passed by him. The Commissioner added—

"I would, however, point out that when I gave you the opportunity (as required by law) of making any representation, you stated that you had no objection to raise except possibly that assessment had already been made in Allahabad."

Thereupon, on the 20th February, 1924, Mr. Sinha applied to the Commissioner of Income-tax for review of his order or reference to the High Court. The application of Mr. Sinha was refused by the Commissioner per his order, dated the 22nd February, 1924. The Commissioner held that he had no power to review his own order and that no question of law arose necessitating any reference to the High Court. Hence this application before us for asking the Commissioner of Income-tax to state the case and to refer it to the High Court for determination. The reference is sought on the following points:—

- (a) whether the Commissioner of Income-tax having once passed an order under section 33 has power to review his own order on sufficient grounds being shown?
- (b) whether the requirements of the proviso to section 33(2) of the Income-tax Act, in regard to giving the petitioner reasonable opportunity of being heard, have been complied with in this case?
- (c) whether, in view of the provisions of section 14 of the Income-tax Act, income derived as a member of a Hindu undivided family can be assessed jointly with the petitioner's personal income?

The first point is directed against the view of the Commissioner of Income-tax as to his power of viewing his own order passed under section 33 of the Act. The Commissioner in his order refers probably to an instruction issued by the Inland Board of Revenue, contained in paragraph 76 of the Income-Tax Manual at page 111(a). The instruction runs as follows:—

"The power conferred by this section as a Commissioner can only be exercised once in any particular case. A Commissioner who has once

passed an order in connection with any case under section 33 cannot review that order even if he subsequently finds that he has made a mistake in passing such order."

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The order in the present case was passed by the Commissioner upon his own initiative, and there is no appeal from his order. It is contended by Mr. *Jayaswal* on behalf of Mr. Sinha, that unless the aggrieved party is allowed to have the order reviewed by the Commissioner there is no remedy left to him and consequently the circular should not be allowed to override the principle that every Court or officer has power to review its or his own order on being convinced of its or his mistake. Mr. *Jayaswal* wants the authority of the circular to be tested. This is consequently a question of law which must be determined by the Court.

The next question is based upon the proviso to section 33, clause (2), of the Act. It is said that no reasonable opportunity was given to the applicant of being heard before the final order was passed by the Commissioner on the 22nd December, 1923. On the 13th December, 1923, the Commissioner wrote to Mr. Sinha intimating him the estimated letting value of his house at Allahabad and asking him to show cause under section 33 why that value should not be added to his income in order to assess additional tax and super-tax. This letter was written from Ranchi and was received by Mr. Sinha while on tour. The date fixed for the disposal of the case was the 21st December, 1923. The letter did not state the place where the cause was to be shown. On the 20th December, 1923, Mr. Sinha wrote to the Commissioner of Income-tax stating that he was "on tour" and that on his return he would write in detail and virtually asked him to postpone the disposal of the matter until his return. The matter was disposed of on the 22nd December, 1923, after the receipt of this letter of the 20th December. Mr. *Jayaswal* contends that no opportunity was given to Mr. Sinha of being heard before the matter was disposed of.

The circumstances set forth above raise a question of law which justifies a reference by the Commissioner to the High Court for determination of point (b) mentioned above.

The last point is obviously a question of law upon which a reference is necessary.

As to the High Court's power to call for a reference in this case, Mr. *Jayaswal* has referred to the principles underlying the decision of their Lordships of the Judicial Committee in *Alcock Ashdown and Company, Limited, v. The Chief Revenue Authority of Bombay* (1). He says that in accordance with the order passed on the 22nd December, 1923, by the Commissioner *suo motu* under section 33, the Income-tax Officer revised on the 9th January, 1924, the original assessment made by him and imposed an additional assessment of tax upon the value of the house referred to above. Against this additional assessment there could be no appeal either under section 31 or 32 of the Act, particularly when the assessment was made in pursuance of the order of the Commissioner under section 33. Under clause (1) of section 66 the Commissioner could on his own motion refer the questions of law that arose in the case for the opinion of the High Court. The Commissioner when moved by the assessor to make a reference refused to do so. We think that the High Court can in the circumstances call for a reference.

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Accordingly, we call upon the Commissioner of Income-tax to state a case on all the three points (a), (b) and (c) mentioned above, setting forth the facts relating to the matters in question, and refer the same for the opinion of the High Court.

K. P. Jayaswal (with him *D. L. Nandkeolyar* and *A. P. Upadhyaya*), for the petitioner: The law requires that no order prejudicial to the assessee shall be passed unless and until an opportunity has been given to him to be heard. The Commissioner enhanced the tax without hearing the assessee and refused to review the *ex parte* order on the ground that he had no jurisdiction to do so. I submit every court has inherent jurisdiction to review its previous orders.

The Commissioner has acted under section 33 of the Income-tax Act, 1922, but he has given a go-by to the proviso to that section which sets a limitation on his power. The property in respect of which I have been assessed is joint family property, and, as such, cannot be taxed at a rate similar to that applicable in a case of private property.

Sultan Ahmed (Government Advocate), for the Crown: Under section 33 a notice was given to the assessee. He was given a reasonable opportunity and in fact he availed himself of it by replying to the notice and accepting the assessment. In spite of the fact that the assessee did not raise any objections as regards certain deductions, the Commissioner gave him the benefit of the doubt and made allowance for repairs, etc. So far as the provisions of the law are concerned, I submit, they have been fully complied with.

Section 22 is the section under which the assessee had to submit a return under clause (2). Under section 23 action is taken when the income-tax return is deemed to be incomplete or incorrect. One month's time is granted to the assessee to show cause under that section. The income-tax officer, however, has not taken action under section 23. The Commissioner has now proceeded under section 33.

The legislature has deliberately omitted to prescribe any definite period in section 33.

The Commissioner was right in refusing to review his previous order. The assessee had in fact shown cause so the order was not an *ex parte* order. The power of review, when given by statute can only be exercised within the limits prescribed by the statute. A court has undoubtedly an inherent power of review, but it is subject to the conditions attached to the exercise of such power. In this case a reasonable opportunity was given to the assessee.

S. A. K.

DAWSON MILLER, C. J.—The only question of any substance for determination in this case is whether the Commissioner of Income-tax was justified in the circumstances in ordering the Income-tax Officer to issue a supplementary demand upon the assessee purporting to act under section 33 of the Indian Income-tax Act, 1922. What happened was that the assessee on the 25th May, 1923, was assessed to income-tax. The income-tax officers ascertained subsequently that he owned certain house property and communications took place with the assessee calling attention to his house in Patna, a house which he had in Allahabad and another house which he had at Solon or in that neighbourhood in the Himalayas. Some correspondence took place between the Commissioner of Income-tax and the assessee in which the latter pointed out that he had only got into his house in Patna at the end of March 1923, that his house in the Himalayas was in a native state and not subject to taxation in British India and that with regard to his house in Allahabad he understood that that being in another province was being taxed there and consequently he had not included it in his return. In the result on the 13th December 1923 the Commissioner of Income-tax wrote to the assessee that it had been ascertained that the annual letting value of his house at Allahabad was Rs. 2,400 and he requested

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him to show cause under section 33 of the Income-tax Act why a sum of Rs. 2,400 should not be added to his income for the purpose of assessment for the past financial year. It will be observed that in that letter, which is dated the 13th December, the Income-tax Commissioner gave Mr. Sinha a week in which to reply to his letter. He did not make any appointment nor did he fix a place or time of meeting so as to give Mr. Sinha an opportunity of producing evidence before him or being heard within the meaning of section 33 of the Income-tax Act and the question which we have to decide in this case is whether by that letter of the 13th December and by the subsequent order of the Commissioner made on the 22nd December the assessee was given a reasonable opportunity of being heard within the meaning of the Act. The section provides that the Commissioner may, of his own motion, call for the record of any proceeding under this Act which has been taken by any authority subordinate to him, or by himself when exercising the powers of an Assistant Commissioner, under sub-section 4 of section 5. The second clause of the section provides that on receipt of the record the Commissioner may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit. It must be conceded that an enquiry was made under sub-section (2) of section 33 and that enquiry, which consisted partly of correspondence with Mr. Sinha and partly of enquiries made from other sources, resulted in the information that this house was of the annual value of Rs. 2,400, and that having been done, then it was within the competency of the Commissioner to pass such orders thereon as he thought fit. But there is a provision at the end of the section which says :

“ Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.”

What happened was this. On receipt of the letter of the 13th December Mr. Sinha, who is a member of

the Executive Council of this province, and who was on tour at the time, replied on the 20th December stating in effect that he was permanently residing in his house at Allahabad for many years and all payments in connection with his house used to be made there; that he had been under the impression that the same system continued but a nephew of his was now living in the house and was looking after the establishment there:

"but if on the ground that income-tax is to be paid by a person where he ordinarily resides the payment in Allahabad was stopped I shall have no objection to your assessing me on the assessed value of my Allahabad house."

If the matter had ended there I think there might have been some ground for stating that the order passed by the Commissioner after the receipt of that letter was fair and reasonable but the letter goes on:

"I return to Patna on the 2nd January and shall then write to you definitely on the subject. In the meantime I have written to my nephew making enquiries about the matter."

I may say at the outset that where an order is passed by the Commissioner under section 33 in circumstances such as the present, that is to say in circumstances where he is really exercising the duties of the income-tax officer under an earlier section namely, section 23, sub-section 2 of the Act, and is, in effect, calling upon the assessee to give evidence to support the original return made by him, then I think that a week's notice or 8 days' notice, as was the case here, is certainly not sufficient time, but it will be observed from Mr. Sinha's letter that he considered that he would be given a further opportunity of considering this matter because he said that he would be back in Patna on the 2nd January and he would write to the Commissioner then definitely upon the subject. Therefore he was certainly under the impression that he would be given a further opportunity of considering this matter and of definitely putting his views before the Commissioner. That opportunity, however, he was never given because on receipt of his letter which was written on the 20th the Commissioner passed the order on the 22nd directing the Income-tax

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officer to issue a supplementary demand. On the 19th January the demand having presumably been received Mr. Sinha wrote to the Commissioner of Income-tax in continuation of his previous letter and said that no assessment had been made recently on his Allahabad house for the purpose of income-tax, and that whilst this was so, the facts and circumstances of the case were not yet fully made known to the Commissioner and Mr. Sinha was not quite sure that his Allahabad house was liable for assessment and he said that it would be in the interests of justice if the Commissioner would kindly give him an opportunity of stating his views before he passed any final orders on the subject. In answer to this the Commissioner wrote back and said that he had finally disposed of the matter on the 22nd December and he had no power to review his order and he refused to consider the matter any further. As I have already said it seems to me that the only question is whether the notice given on the 13th December and the subsequent order made on the 22nd December were justified having regard to the provisions of section 33. I do not think that any reasonable opportunity was given at all to the assessee in this case either to present his case or to come and place his evidence before the Commissioner. He was given a week in which to reply. He said what in effect amounts to this that he had no objection to the assessment at the rate claimed but that he would write again definitely about the matter in a short time and meantime he would consult his nephew who was living in the house. On receipt of that letter the order was passed and no opportunity at all, certainly no reasonable opportunity within the meaning of section 33, was, in my opinion, given to the assessee to put his case before the Commissioner because the order was passed without informing the assessee what he proposed to do. The case of the assessee is that this house in Allahabad is really owned by him as a member of a Hindu joint family and under the provisions of section 14 of the Act the tax shall not be payable by an assessee in respect of any sum which

he receives as a member of a Hindu undivided family. It may be quite true that on the 13th December when Mr. Sinha wrote to the Income-tax Commissioner this matter was not present to his mind. The enactment is a recent one. It found place for the first time in the Act of 1922 but at the same time up to that time the assessee had had no reasonable opportunity of going into the matter and it is not surprising that at the end of a week only he did not discover that this house being owned not by himself in his personal capacity but as a member of a Hindu undivided family, was not subject to assessment as against him personally at all. As I have already stated I do not think that the notice given in this case was reasonable within the meaning of section 33 and that an opportunity ought to be given to the assessee to place his case before the Commissioner before any order is finally passed. The sum is a small one in this case. In addition to the cost of printing the paper book and the deposit which the petitioner is entitled to get back, I think that the hearing fee should be assessed at 5 gold mohurs.

FOSTER, J.—I agree.

APPELLATE CIVIL.

Before Jwala Prasad and Rosl. J.J.

H. MATHEWSON

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL. *

1924.

July, 6.

*Barabhum Ghatwal, dismissal of—*forfeiture of tenure on dismissal—*Suit by ghatwal for possession of tenure, maintainability of—limitation—Barabhum Ghatwali Regulation, 1814 (Ben. Reg. XXIX of 1814), section 65.*

A *ghatwal* of Barabhum who is dismissed for misconduct and neglect of duty forfeits the *ghatwali* tenure. This rule

* Appeal from Original Decree No. 243 of 1919, from a decision of A. E. Scroope, Esq., District Judge of Manbhumi, dated the 20th day of August, 1919.