

1925.

RAJA.
 RAJENDRA
 NARAYAN
 BHANJA
 DEO
 v.
 COM-
 MISSIONER OF
 INCOME-
 TAX, BIHAR
 AND ORISSA.

DAWSON
 MILLER, C.J.

prescribed under the Act does not seem to me to carry with it the result that unless everything is done exactly as provided by the form it is of no force and effect. Although no time is prescribed for issuing the notice in question I suppose it may be said that such a notice must be issued within a reasonable time. What would be a reasonable time might vary according to circumstances. In the present case it was, as I have already said, about 14 months after the expiry of the year of assessment but from November of the year of assessment the assessee had in fact had notice, although no formal demand was made upon him, of the amount for which he had been assessed to income-tax for that year, and again he had notice in the following January showing that a demand was being made upon him for payment of the same sum on the ground that no previous assessment had been made. In these circumstances it seems to me that the notice was issued within a reasonable time. There is no period of limitation in the Act and I do not think in the circumstances the assessee should be allowed to escape payment of that which is justly due from him. I think that in this case the costs should be paid by the assessee who asked for a case to be stated. Having regard to the small amount in dispute we assess the hearing-fee at Rs. 150.

MACPHERSON J.—I agree.

REFERENCE UNDER THE INCOME-TAX ACT, 1922.

1925.

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

AMBIKA PRASAD SINGH

June, 11.

v.
 THE COMMISSIONER FOR INCOME-TAX, BIHAR
 AND ORISSA.*

*Income-tax Act, 1922 (Act XI of 1922), section 14(1)—
 Scope of.*

The whole object of section 14 is to exempt from taxation in the hands of an individual that which has already been taxed

* Miscellaneous Judicial Case no. 147 of 1924.

in the hands of the joint family as such. If, however, the individual receives an income aliunde from property which has not been taxed as that of a Hindu joint family, the provisions of section 14 have no application whatever.

1925.

AMBIKA
PRASAD
SINGH

THE COMMIS-
SIONER
FOR INCOME-
TAX, BIHAR
AND ORISSA.

The facts of the case material to this report are stated in the following statement of the case by the Commissioner of Income-tax :

" The question for the determination of the High Court is whether, when a man receives an annual allowance from his son out of a property which the son inherited from his maternal grandfather, this sum is exempt under the provisions of sub-section (1) of section 14 of the Indian Income-tax Act, 1922.

2. The facts are as follows :—

3. The assessee, Babu Ambika Prasad Singh, is father of the Maharaja of Tikari, proprietor of the 9-annas Tikari Raj. The assessee has no share in the property which constitutes the Raj, though he has other property. The Maharaja has, for some years, made him an annual allowance in cash which according to the assessee has now been stopped; but the assessee admits payment of Rs. 23,528 during the year 1922-23 which was assessed to income-tax in the year 1923-24.

4. In my opinion this sum was not received by the assessee in his capacity as member of a Hindu undivided family. Section 14 appears to me to mean that where a member of a Hindu undivided family has a separate income of his own that income alone will be taxed and not also any further income which may be distributed to him from the joint property of the undivided family. Even admitting that the assessee and the Maharaja form a Hindu undivided family the payment made to the assessee out of property which is not joint between him and his son is not a sum which he receives as a member of a Hindu undivided family and it therefore appears to me that the sum is assessable.

K. P. Jayaswal (with him *N. P. Prasad*), for the assessee.

Sultan Ahmad, Government Advocate, for the Commissioner of Income-tax.

DAWSON MILLER, C. J.—This is a case stated for the opinion of the Court by the Income-tax Commissioner under section 66, sub-section (1), of the Income-tax Act, 1922.

The assessee Ambika Prasad Singh is the father of the present proprietor of the 9-annas Tikari Raj. The assessee has no interest in that property but his son the proprietor has been in the habit of making him an allowance yearly out of the proceeds of the property

1925.

AMEIKA
PRASAD
SINGH

THE COMMIS-
SIONER
FOR INCOME-
TAX, BIHAR
AND GRISSA.

of the Tikari Raj. Upon that the assessee has been assessed to income-tax and the question which is submitted for our opinion in this case is formulated by the Income-tax Commissioner thus :

" The question for the determination of the High Court is whether, when a man receives an annual allowance from his son out of a property which the son inherited from his maternal grandfather, this sum is exempt under the provisions of sub-section (1) of section 14 of the Indian Income-tax Act, 1922."

DAWSON
MILLER, C.J.

Section 14, sub-section (1), provides as follows :

" 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."

The learned Commissioner was of opinion that as the assessee received this sum as an allowance from his son and not by reason of any right to share in the proceeds of the Tikari Raj that property not being the property of an undivided Hindu family he did not come under the provisions of section 14, sub-section (1). His view of that section is that it only applies to cases where the assessee receives the income in the capacity of a member of a Hindu undivided family. If he receives it as a mere gratuitous allowance to which he is not in law entitled by reason of being a member of a joint family then he does not come under the provisions of section 14. That is the only question which has been submitted for our opinion.

It is contended by Mr. Jayaswal on behalf of the assessee that if he is joint with his son for any purpose, and he contends that in the present case he is joint for some purposes, then anything which he may receive from his son is received by him as a member of a Hindu undivided family. I cannot think that the section bears any such interpretation. The whole object of the section is to exempt from taxation in the hands of an individual that which has already been taxed in the hands of the joint family as such. If, however, the individual receives an income aliunde from property which has not been taxed as that of a Hindu joint family then it would appear that the provisions of section 14 have no application whatever. In my opinion

the learned Commissioner took a correct view of the section and the question propounded for our opinion must on the facts stated be answered in the negative.

MACPHERSON, J.—I agree.

APPELLATE CIVIL.

Before Das and Ross, J.J.

KHUDI RAI

v.

LALO RAI.*

1925.

AMBIKA
PRASAD
SINGH

v.
THE COMMIS-
SIONER
FOR INCOME-
TAX, BIHAR
AND ORISSA.

1925.

June, 12.

Code of Civil Procedure, 1908 (Act V of 1908), Order XXIII, rule 1—Application for permission to withdraw from suit with liberty to bring a fresh suit—Order permitting withdrawal, effect of.

Where an application is made by a plaintiff to withdraw a suit with liberty to bring a fresh suit on the same cause of action and an order is passed giving permission to withdraw the suit although nothing is said in the order as to the plaintiff's right to institute a fresh suit, the order should be read along with the petition and construed as granting permission to institute a fresh suit.

Golam Mahomed v. Shubendra Pada Banerjee(¹) and *Keegangote Narayan Tantri v. Nagappa*(²), followed.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Das, J.

S. K. Mitter, for the appellant.

G. S. Prasad, for the respondents.

* Appeal from Appellate Decree no. 1266 of 1922, from a decision of H. Foster, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 26th July, 1922, reversing a decision of B. Jogindra Nath Sarkar, Deputy Collector of Ranchi, dated the 28th June, 1921.

(1) (1908) I. L. R. 35 Cal. 990.

(2) (1918) 34 Mad. L. J. 515; 44 Ind. Cas. 889, F. B.