

## REFERENCE UNDER THE INCOME-TAX ACT, 1922.

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

RAJA RAJENDRA NARAYAN BHANJA DEO

v.

COMMISSIONER OF INCOME-TAX, B. & O.\*

1925.

June, 8.

*Income-tax Act, 1922 (Act XI of 1922), section 29—limitation—notice of demand, when can be issued—reasonable time—form of notice, significance of.*

No period is prescribed within which a notice demanding income-tax under section 29, Income-tax Act, 1922, is to be issued, and the mere fact that the ordinary form prescribed for such a demand contemplates that it will be issued during the current year of assessment, is not tantamount to an enactment that it cannot be issued afterwards.

But although no period of limitation is prescribed for such a demand, it must be made within a reasonable time.

A notice issued 14 months after the expiration of the year of assessment would not, therefore, necessarily be too late.

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 determination of the High Court is whether, when in the year 1922-23 the Income-tax Officer only made an adjustment in respect of the income of 1921-22, and made no demand for the assessment of 1922-23, the Income-tax Officer can, in the year 1923-24, make the omitted demand.

2. The facts are as follows: In 1922-23 the Collector, as Income-tax Officer, determined the income of 1921-22 of the assessee (Raja Rajendra Narayan Bhanj Deo of Kanika) to be Rs. 67,490 and passed an order, dated October 31, 1923,

" assess to Rs. 2,805 income-tax and Rs. 1,093-2-0 super-tax."

As the assessee had been provisionally assessed in 1922-23 on an income of Rs. 1,55,181 and had paid income-tax and super-tax amounting to Rs. 9,715-14-8 and Rs. 8,460-2-0, respectively, an adjustment was made under section 89 of the Indian Income-tax Act, 1922, which resulted in a refund of Rs. 14,277-14-8, but no demand notice under section 29 for the income-tax and super-tax due in the year 1922-23 was made.

\* Miscellaneous Judicial Case no. 80 of 1925.

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On January 26, 1924, the Income-tax Officer ordered the issue of a notice under section 84 of the Act on the ground that the income of 1921-22 had escaped assessment under the Act of 1922 and ultimately issued a demand notice for Rs. 2,905 income-tax and Rs. 1,098-2-0 super-tax.

3. It is desirable to explain the assessment procedure under the Income-tax Act of 1918. Under that Act the income of (say) 1920-21 was provisionally assessed in 1920-21, but as the income could not be accurately known till after the close of the year the ascertained income of 1919-20 was made the basis of this provisional assessment. Then in 1921-22 an adjustment was made; if the actual income of 1920-21 was found to be more than that of 1919-20, a further demand was made, while if it was less, a refund was granted, and also in 1921-22 a provisional assessment of the income of 1921-22 on the basis of the known income of 1920-21 was made. In the present case the assessee was entitled under the second proviso to section 69 of the Act of 1922 to the adjustment which was made, but he was also liable to be assessed in 1922-23 on the actual income of 1921-22 under sections 2(11), 3 and 22, which together provide for the assessment in any year of the income of the previous year.

4. The assessee contends: (i) that the income of 1921-22 cannot be taxed twice in the absence of an express provision of law to that effect, and (ii) that there was no escape of income within the meaning of section 84 and that at most there was a mistake apparent from the record which under section 35 can only be corrected within one year from the date of the demand notice.

(i) As regards the first point, in my opinion there is the necessary express provision of law. As explained in paragraph 3, section 18, of the Income-tax Act of 1918, provides for the provisional assessment in 1921-22 of the income of the year 1921-22 while section 2(11), 3 and 22 of the Income-tax Act of 1922 provide for the assessment of the income of 1921-22 in the year 1922-23. That this is the effect of the law was recognized by the Legislature, as is shown by the enactment of section 25 of the Act of 1922, which provides for an adjustment when a business profession or vocation is discontinued to compensate the assessee for the double taxation of the income of 1921-22. It may be mentioned that this fact is also recognized by the commentators F. D. Aiyangar (The Law of Income-tax, pages 342-3 and 354), A. V. Visvanatha Sastri (The Law and Practice of Income-tax in British India, page 195, paragraph 349), and this procedure has been followed universally throughout India by the department and has never been contested. I may perhaps be allowed to add for your Lordships' information that the adjustment system was retained for one year under the 1922 Act at the request of representatives of the commercial community. The year 1921-22 was a bad year and consequently the nett result of its retention was a heavy loss for the revenue as the refunds due on adjustment exceeded the sum recovered on adjustment by 2½ crores of rupees.

(ii) As regards the second contention, in my opinion neither section 84 nor section 35 has any application.

(a) Section 84 deals with the assessment of income which has escaped assessment, but in the present case the income of 1921-22 was computed by the Collector and the assessment completed as is

shown by his order of October 31, 1923, and the amount of income-tax and super-tax payable was determined. Nothing escaped assessment but the Collector omitted to issue a demand notice under section 29 for the income-tax and super-tax due. This he should have done, of course, allowing credit for the refund to which the assessee was entitled as explained above. As the Income-tax Act of 1922 lays down no period of limitation for the issue of a demand notice under section 29 after the sum payable has been determined, the Income-tax Officer has power even now to make the demand without invoking section 34.

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(b) Section 35 deals with the rectification of mistakes apparent from the record. In the present case there was no mistake in the assessment, but only an omission to take the subsequent steps necessary for the recovery of the amount due. Moreover, the fact that the period of limitation within which section 35 must be applied is reckoned from the date of the demand being made, implies that the section can only operate after a demand has been made, while in the present case the demand was omitted.

5. It is submitted that this view of the law is supported by the decision of the Madras High Court, dated the 26th September, 1928, in Reference Case no. 4 of 1923, *Commissioner of Income-tax, Madras, v. M. S. S. Chidambaram Chettiar and Meyappa Chettiar* (1).

6. I may mention that if the High Court accepts this view, I propose in exercise of my powers of review to cancel the assessment under section 34 and to direct the Income-tax Officer to issue a demand notice for the income-tax and super-tax previously assessed, but not demanded.

*K. P. Jayaswal*, for the assessee: There was no proper notice of demand as contemplated by section 29 of the Act. Although the legislature has not prescribed any period of limitation for a notice under section 29, it has to be inferred from the prescribed form which contemplates the issue of a demand notice in the year of assessment. The Commissioner is wrong in saying that, in the absence of an express provision prescribing limitation, he can make a demand any time after the current year. The Act should be construed in favour of the assessee.

*Sultan Ahmed*, Government Advocate, for the Crown: There is no period of limitation prescribed for the making of a demand under section 29. Wherever any limitation is prescribed in the Act it is provided for in the proper sections. The omission

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in the case of a notice under section 29 leads necessarily to the conclusion that the legislature did not intend to prescribe any limitation in such a case. The prescribed form cannot regulate the period of limitation. There must be some express provision in the statute to limit the period.

*Jayaswal*, in reply: The legislature has not provided for a situation arising from non-service of notice in the current year. That omission is deliberate and significant. The prescribed form is a part of the notice itself.

DAWSON MILLER, C. J.: The only question in this case is whether the assessee can escape payment of income-tax and super-tax assessed at Rs. 3,898 for the financial year 1922-23 on the ground that the demand notice issued to him claiming payment of the tax was not issued during the financial year for which the tax was payable. What happened was that for the previous year (1921-22) he had been assessed for income-tax and super-tax at a sum of over Rs. 18,000. That was under the Act of 1918. Under the provisions then in force the assessment was in all cases a provisional one based on the previous year's income but liable to adjustment when the actual income for the year in question came to be known. It so happened that the income for that year 1921-22 had been provisionally assessed at a sum very much larger than the actual income turned out. In fact the actual income for 1921-22 produced a tax and super-tax amounting together to only Rs. 3,898. There was therefore a balance due to the assessee on adjustment of over Rs. 14,000. That balance was ascertained after taking into consideration the return made by the assessee of his actual income for the year 1921-22. The return was made for the purpose of ascertaining the income for the next succeeding year, that is to say the year which began in April 1922. That year came under the new Act of 1922 by which the provisional adjustments were abandoned and a different

method of adjustment was adopted, namely, the income for any financial year was based once and for all upon the actual income of the previous year. Accordingly on the 1st November 1922, the assessee whose return was accepted was served with a notice intimating that in respect of the income of the previous year he was entitled to a refund of Rs. 14,277. That sum was the surplus which he had paid for the previous year over and above that which, as it turned out, he was liable to pay upon the actual income earned. When that notice was issued it was perfectly clear from the form of it that the income for the year 1922-23 which was based upon exactly the same assessment would also be taxed and super-taxed to the extent of Rs. 3,898 but for some reason or other no actual demand for payment of that sum for 1922-23 was made at that time. This appears to have been discovered sometime before January 1924 and on the 26th of that month the income-tax officer, finding that no income-tax had been paid by the assessee in respect of the year 1922-23, treated the case as one under section 34 of the Income-tax Act, 1922, which provides for cases where no assessment has been made or where certain items of income have not been taken into account in making the previous assessment. The section provides in effect that in such a case where income has escaped assessment or has been assessed at too low a rate for any year the income-tax officer may, at any time within one year of the end of that year, serve on the person liable to pay tax notice containing the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income. If that were the real state of affairs and no assessment had in fact been made for the year 1922-23 then no doubt section 34 would apply and the notice which was issued under that section, on the 26th January 1924, would be a notice issued within the time prescribed for that purpose under that section. Here again it was obvious to the assessee that he had been assessed for a tax to the amount of Rs. 3,898 for the year in question so

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that although no demand in the prescribed form for the income-tax for that year was served, there was in fact an intimation to the assessee on two occasions, namely, on the 1st November 1922 and the 26th January, 1924, of what the amount of the income-tax payable by him was.

The Income-tax Commissioner before whom the case came eventually and who stated a case for the High Court considered that this was not a case to which section 34 applied, that is to say he did not think it was a case where no assessment had been made for the year in question or where any part of the income profits or gains had escaped assessment, for an assessment had actually been made. Therefore upon the case stated we must take it that the facts do not disclose a case coming within section 34. Then on the 9th June, 1924, the assessee having taken exception to the demand under section 34 a fresh notice was issued in the ordinary form prescribed under the Act demanding the income-tax for the year 1922-23. It will be seen that this notice was issued something more than a year after the expiration of the year of assessment and the assessee contends that that is too late to make any demand under the provisions of section 29 of the Act. Section 29 of the Act provides that

“ When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.”

The first thing to be observed is that no period within which such a notice demanding income-tax is to be issued is prescribed in the Act and therefore prima facie a notice issued about 14 months after the expiration of the year of assessment would not necessarily be too late. The assessee, however, relies upon the form under which the demand referred to under section 29 is to be made. That form is headed

“ Notice of demand under section 29 of the Income-tax Act, 1922.”

It begins thus:

" You have been assessed for the current year to income-tax amounting to Rs....."

and so on. The learned Counsel for the assessee contends that that form clearly indicates that the demand can only be made during the current year, that is to say the year in respect of which the income-tax is payable. No doubt in the ordinary course the form prescribed would be quite applicable because assessments are generally made as soon as possible after the commencement of the financial year and the demand notices are sent out in the ordinary course soon after the assessment is made. I cannot believe, however, that it was intended by prescribing a form of notice of this sort to create a limitation period within which such notice must be given. If it had been the intention of the legislature to prescribe a period of limitation for such notices I think that such an important provision would have found place in the body of the Act itself indicating that intention. In other sections of the Act we do find that where certain notices have to be given the period within which they have to be given is prescribed. But so far as section 29 is concerned no period at all is prescribed in the Act. Again it is quite possible that in certain cases no demand could be made within the actual year for which the tax is payable. Provision is made for disputes which may arise as to the acceptance or rejection of the assessee's return. If his return is not accepted then an enquiry takes place, evidence may be demanded of him and much time may be expended in carrying on the enquiry, and it is quite possible that such enquiry would not terminate until after the year of assessment and I do not think it can be suggested that because the ordinary form prescribed for such a demand contemplates that it will be issued during the current year of assessment, it is tantamount to an enactment that it cannot be issued afterwards. If any part of the form should not be applicable to the particular facts of the case then I presume it can be altered in the ordinary course before the form is sent out, but the mere fact that forms are

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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.

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

AMBIKA PRASAD SINGH

v.

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

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June, 11.

*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.