

## FULL BENCH (CIVIL).

*Before Sir Guy Ruddle, Kt., K.C., Chief Justice, Mr. Justice Carr and  
Mr. Justice Das.*

## COMMISSIONER OF INCOME-TAX

v.

A.R.A.N. CHETTIYAR FIRM AND  
V.D.M.R.M. CHETTIYAR FIRM.\*

1927

Sep. 6.

*Income-tax Act (XI of 1922), ss. 22 (2), 23 (2), (3), (4), 30 (1), 63—Return without details no return—Court's jurisdiction to decide legality of assessor's action under s. 23 (4)—Service of notice on agent of Hindu undivided family whether sufficient.*

*Held*, that where an assessee makes a return without filling in the details required by law, the Income-tax authorities can treat the return as a nullity and proceed to make the assessment under section 23 (4) of the Income-tax Act. Under section 30 (1) no appeal lies in respect of such assessment, but the Court has jurisdiction to inquire whether the Income-tax authorities acted legally or not in assessing under section 23 (4).

*Held*, that where the assessee is a joint Hindu family residing in Madras, but carry on business in Rangoon by an agent, service of notice on the agent under section 22 (2) of the Act is sufficient. Under section 63 (2), such service is not obligatorily required to be made on a member of the family.

*A. Eggar* (Government Advocate) for the Commissioner.

*Daniel, Tambe* for the respondents.

RUTLEDGE, C.J.—A preliminary submission was made by the learned Government Advocate that no appeal lay and that the Court had no jurisdiction. He admitted that this ground had not been taken by the Commissioner of Income-tax, who, in fact, made the reference. We stated that in order to determine whether the objection was valid, we would have to consider the facts in both cases.

With regard to the first reference, the firm carried on business at Paungde and Thegon in Prome District.

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\* Civil Reference Nos. 5 and 6 of 1927.

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They made a return on the prescribed form Exhibit A under Head 5 "Business, Trade, etc. Profits or income in money-lending business about Rs. 5,000." None of the details required under Note 5 at pages 2 and 3 of the form were given and the Income-tax authorities treated the return as no return at all and ultimately made the assessment under section 23 (4) of the Income-tax Act.

For the assessee it is argued that though defective the return cannot be treated as a nullity and that the details required in the form are only instructions to the assessee as to how he should fill up the form.

I am clearly of opinion that the particulars prescribed by the form are laid down in the Act itself [section 22 (2)]. Statutory Rule 19 embodies the form of return (Exhibit A) furnished to the respondent. This rule has the same force as a section in the Act and a return which completely ignores its provisions cannot, in my opinion, be considered as any return.

The appellant relied on *Pitta Ramaswamiah v. The Commissioner of Income-tax, Madras* (1). This case cannot help him as I have not the form which the assessee filled up in that case and the Court decided that the assessment in fact had been made under section 23 (3) and not under section 23 (4).

For these reasons I would answer the question referred in the affirmative.

That being my finding, I shall now consider the preliminary objection. Though the Income-tax authorities have in my judgment rightly assessed the firm under section 23 (4) of the Indian Income-tax Act, the question at issue was whether they had rightly done so, and the Commissioner was justified in referring

that objection to this Court for a ruling. It would not be in the interests of justice to put such a construction on the proviso to section 30 (1) as to prevent this Court from enquiring into the case submitted whether the Income-tax authorities had acted legally in assessing under section 23 (4). As the firm has failed in its contention, I would direct them to pay the Commissioner's costs, seven gold mohurs.

*Civil Reference No. 6 of 1927.*—The question referred in this case is as follows :—

“The assessee being a Hindu undivided family residing in the Madras Presidency and carrying on business in Rangoon through an agent, was the service on the agent of the notice under section 22 (2) of the Indian Income-tax Act a good service?”

The question turns upon the construction of section 63 of the Indian Income-tax Act. That section runs as follows :—

“63. (1) A notice or requisition may be served on the person therein named either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may in the case of a firm or a Hindu undivided family be addressed to any member of the family, or to the manager or any adult male member of the family, and in the case of any other association of individuals be addressed to the principal officer thereof.”

It is admitted on behalf of the respondent firm that a notice on the agent would be a perfectly valid notice under sub-section (1), but it is contended that as a special provision has been made for service on a joint Hindu family by sub-section (2), this special provision excludes the operation of sub-section (1)

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as regards service of notice on such a family, and that the summons should be served in accordance with section 28 of the Code of Civil Procedure and Order 5, Rule 21.

In my opinion the Commissioner's view is correct. If it had been the intention of the Legislature to have prescribed section 23 (2) as the only method by which a joint Hindu family could be served, they would not in my opinion have used the word "may" but the mandatory word "shall." And with regard to the argument that the sub-section on this reading is unnecessary and surplusage, there is force in the Commissioner's argument that the intention was to fasten the firm with personal responsibility, so that, if necessary, the penal provisions of section 51 could be applied.

I would accordingly answer the reference in the affirmative. As the firm have failed in their contention, they should pay the Commissioner's costs, seven gold mohurs.

CARR, J.—I concur.

DAS, J.—I concur.