

INCOME-TAX REFERENCE.

Before Sir Benjamin Heald, Kt., Officiating Chief Justice, Mr. Justice Chari and Mr. Justice Ormiston.

S.P.K.A.A.M. CHETTYAR FIRM

v.

THE COMMISSIONER OF INCOME-TAX.*

1929

Aug. 29.

Income-tax Act (XI of 1922), ss. 23 (4), 66(3)—Assessment under s. 23 (4)—Assessment "to the best of his judgment"—High Court's power to decide whether officer acted rightly and legally—Assessment must be based on materials and reasons, not to be penal, arbitrary and purely on opinion.

Where the conduct of an assessee justifies the Income-tax authorities to make an assessment under s. 23 (4) of the Income-tax Act, it is a question of law for the High Court to decide whether the authorities acted legally and rightly in making the assessment.

In the circumstances the Income-tax Officer has to make the assessment to the best of his judgment. But in doing so he must act according to the rules of reason and justice and not according to private opinion, according to law and not humour, and the assessment must not be arbitrary, vague and fanciful but legal and regular. The Income-tax Officer should state in his order the materials or reasons on which his judgment is founded, and should not fix arbitrarily a penal sum.

Commissioner of Income-tax v. A.R.A.N. firm, 6 Ran. 21; P.K.N.P.R. firm v. Commissioner of Income-tax, C.M. Ap. 10 of 1929—referred to.

Leach for the applicant.

Gaunt (Officiating Government Advocate) for the Crown.

A Bench composed of Heald and Mya Bu, JJ., called upon the Commissioner of Income-tax to make a reference under section 66 (3) of the Income-tax Act. The facts of the case appear in the order reported below.

1929, *March* 18. HEALD and MYA BU, JJ.—Applicants, who are the S.P.K.A.A.M. Chettyar firm, made a

* Civil Miscellaneous Application No. 135 of 1928 and Civil Reference No. 10 of 1929.

1929
 S.P.K.A.A.M.
 CHETTYAR
 FIRM
 v.
 THE
 COMMISSIONER OF
 INCOME-TAX,
 HEALD AND
 MYA BU, JJ.

return of their income for 1927-28 for purposes of income-tax and produced their books of account before the Income-tax Officer. That officer discovered that certain payments of interest alleged to have been made by the M.M. Chettyar firm and the K.S.M. Chettyar firm to applicants had not been entered in the books which were produced, and after enquiry held that applicants had not complied with the requirements of section 22 (4) of the Income-tax Act. He accordingly proceeded to make an assessment under section 23 (4) of the Act, that is an assessment to the best of his judgment, and assessed applicants on an income of Rs. 3,25,540. No appeal lies against such an assessment but applicants were entitled to apply for cancellation of the assessment under section 27 of the Act, and did so apply. The Income-tax Officer refused to cancel the assessment and applicants appealed to the Assistant Commissioner against his order refusing cancellation. The Assistant Commissioner dismissed the appeal. Applicants then applied to the Commissioner to state the case under section 63(2) of the Act, but he refused.

Applicants now ask us for an order under section 66(3) of the Act, requiring the Commissioner to state the case and refer it to this Court.

The only question which we have to consider at present is whether or not a question of law arises out of the order of the Assistant Commissioner dismissing the appeal.

In the Full Bench case of *A.R.A.N. Chettyar firm* (1), the learned Chief Justice of this Court said :—

“ 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)."

The question whether the Income-tax authorities acted legally in assessing applicants under section 23 (4) is the very question which arises in this case, and as the Full Bench found in the case cited that that question is a question of law, we are bound to direct the Commissioner to state the case and to refer it under the provisions of section 66 (3) of the Act.

The costs of the hearing in this matter will abide the final orders of this Court on the case.

On the Commissioner's reference, the special Bench passed the following judgment:—

HEALD, OFFG. C.J.—The S.P.K.A.A.M. Chettyar firm of Rangoon was called on to make a return of its income for the year 1926-27 for the purposes of its assessment to income-tax for the year 1927-28. It returned its income at Rs. 28,818-6-6. On investigation the Income-tax Officer found that certain items of interest shown in the books of the M.M. firm of Wakema and the K.S.M. firm of Kayan as paid to the S.P.K.A.A.M. firm did not appear in that firm's accounts, and that there had been several transactions between those firms and the S.P.K.A.A.M. firm which did not appear in the latter firm's accounts. The only explanation given for the absence of these transactions from the books of the S.P.K.A.A.M. firm was that the transactions were dealings not of the firm but of certain of its partners personally. The Income-tax Officer was not

1929

S.P.K.A.A.M.
CHETTYAR
FIRM
v.
THE
COMMISSIONER OF
INCOME-TAX.

HEALD AND
MYA ET, JJ.

1929
 S.P.K.A.A.M.
 CHETTYAR
 FIRM
 v.
 THE
 COMMISSIONER OF
 INCOME-TAX.
 HEALD,
 OFFG. C.J.

satisfied with this explanation because the transactions appeared in the books of the other firms as dealings with the S.P.K.A.A.M. firm and because there was in those books and in the documents recording the transaction nothing to indicate or suggest that the transactions were not dealings with that firm. He however gave the firm's agent time to get particulars from the partners with whom those dealings were alleged to have taken place and to produce the accounts relating to those transactions. The agent failed to give any further particulars or to produce any further accounts, and as he asserted that the firm had no accounts other than those which he had produced, the Income-tax Officer came to the conclusion that the accounts which were produced did not contain all the transactions of the firm and that a portion of the accounts was being withheld. He therefore proceeded to make what purported to be an assessment under section 23 (4) of the Act, and assessed the firm on a Rangoon income of Rs. 3,25,000.

No appeal lies against such an assessment but the assessee is entitled to apply under section 27 of the Act to have the assessment cancelled on the ground that he was prevented by sufficient cause from making a proper return, and the firm filed an application under that section which was dismissed.

The firm then filed an appeal against the order dismissing its application but that appeal was dismissed.

There is no question that these two orders were rightly made, because the sole question which arose on the application and the appeal was whether or not the firm was prevented by sufficient cause from making a proper return, and it is clear that the firm failed to prove that there was any sufficient cause for its default.

The firm then applied to the Commissioner of Income-tax to refer to this Court certain questions of law under section 66 (2) of the Act. The Commissioner refused, but he was required by a Bench of this Court to state and refer the case under section 66 (3) of the Act. He has accordingly stated and referred the case.

The Income-tax authorities' findings of fact are not open to review by this Court unless there is no evidence to support them, and in this case there is abundant evidence to support the Income-tax Officer's finding that the firm was in default. It follows that the Income-tax Officer was entitled to make the assessment to the best of his judgment under the provisions of section 23 (4) of the Act.

The only question which arises in the case is as to the power of this Court to hold that what purports to be an assessment to the best of the Income-tax Officer's judgment was not in fact such an assessment, and was therefore not a legal assessment.

It was said by a Bench of this Court in the case arising out of the *P.K.N.P.R. Chettyar firm's* assessment (1) that "when section 23 (4) says that the Income-tax Officer shall make the assessment to the best of his judgment," it means that he must make it according to the rules of reason and justice, not according to private opinion; according to law and not humour, and that the assessment is to be not arbitrary, vague and fanciful but legal and regular." It was also said that, since there is no appeal against an assessment under section 23 (4), the only remedy against an arbitrary assessment, that is against what is in effect a fine of unlimited amount, is the discretion of the Commissioner to review the assessment under section 33. With these remarks I agree,

1929
 S.P.K.A.A.M.
 CHETTYAR
 FIRM
 v.
 THE
 COMMISSIONER OF
 INCOME-TAX,
 HEALD,
 OFFG. C.J.

(1) Civil Miscellaneous Application No. 10 of 1929.

1929

S.P.K.A.A.M.
 vs. CHETTYAR
 FIRM
 v.
 THE
 COMMISSIONER OF
 INCOME-TAX.
 HEALD,
 OFFG. C.J.

and it is clear that if the Commissioner is to be in a position to review such an assessment, the Income-tax Officer must state in his order the materials or reasons on which his judgment is founded.

In the present case the Income-tax Officer gave no reasons and no indication of the basis of his assessment of the firm's Rangoon income at Rs. 3,25,000. All that he said was that he determines the firm's income for the year at Rs. 3,25,000. So far as appears from his order that determination was entirely arbitrary and was based purely on private opinion. I realise of course that where an assessee withholds the materials for a regular assessment, the assessment to the best of the Income-tax Officer's judgment must necessarily be to some extent arbitrary, but it must also be reasonable and the materials or reasons on which it is founded must be so stated that the Commissioner may be in a position to ascertain whether or not it is reasonable. In this case no reasons or materials have been stated and the effect of the order seems to be that the firm has been fined a very large amount.

I would hold that because the assessment in question was entirely arbitrary and did not purport to be founded on any materials or reasons beyond the Income-tax Officer's private opinion, it was an illegal assessment and I would direct the Commissioner of Income-tax to pay the S.P.K.A.A.M. firm's costs in these proceedings and in Civil Miscellaneous Application No. 135 of 1928 of this Court, advocate's fee in each case to be ten gold mohurs.

CHARI, J.—I concur.

ORMISTON, J.—I concur.