INCOME-TAX REFERENCE.

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

COMMISSIONER OF INCOME-TAX

v.

E.M. CHETTYAR FIRM.*

1929
Aug. 2.

Income-tax Act (XI of 1922), s. 31 (3) (a) and proviso, ss. 63, 66—Questions of law only referable to Court—Conclusions on facts and inferences from facts, not questions of law—Conclusion that accounts are incomplete on account of non-production of books a finding of fact—Assessee cannot claim production of evidence before Commissioner, withheld earlier—Power of Assistant Commissioner to enhance assessment on appeal—Basis of enhanced assessment and reasons to be given—Notice for enhancement need not give materials or figure.

Under s. 66 of the Income-tax Act only questions of law can be referred to the High Court. If there was any evidence upon which it was reasonably possible for the Commissioner to come to the conclusion at which he arrived, the High Court cannot question it.

American Thread Co. v *Joyce*, 6 Tax Cases 1—*referred to.*

An inference of fact drawn from other facts admitted or proved is itself a finding of fact.

Queen v. *Special Commissioners of Income-tax*, 3 Tax Cases 289—*referred to.*

So where the Assistant Commissioner, from the fact of non-production of certain books which the assessee was called upon to produce, coupled with other facts, came to the conclusion that the books of account produced were not the full and complete accounts of the assessee, the High Court would not question the conclusion.

Where an assessee has withheld accounts before the Assistant Commissioner, he cannot as of right produce them before the Commissioner on appeal.

Where an assessee appeals against an assessment to the Assistant Commissioner the latter has power under s. 31 31 (*a*) to enhance the assessment after giving an opportunity to the assessee to show cause against the enhancement. If the assessee has not submitted full accounts the Assistant Commissioner can make an estimate of the income to the best of his judgment. In doing so he does not act under s. 23 (4) of the Act. But in so assessing he must give the reasons and the basis of his assessment for the purpose of enabling the Commissioner as an appellate tribunal to consider whether the enhancement was justified.

The Assistant Commissioner in issuing notice to the assessee under the proviso to s. 31 for enhancement is not bound to state the particular figure of the proposed enhancement or to disclose the materials on which the enhancement would be made.

* Civil Reference No. 4 of 1929.

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Gaunt (Officiating Government Advocate) for the Crown.

Darwood and *Foucar* for the assessee.

HEALD, OFFG. C.J., CHARI and BROWN, JJ.—This is a reference by the Commissioner of Income-tax of Burma. The facts of the case are fully and clearly set out in the reference and it is unnecessary to give them in detail. Briefly stated they are that the E.M. Chettyar firm, which was carrying on business in Moulmein, was assessed for the year 1925-26 by the Income-tax Officer on an income of Rs. 1,00,386 of which Rs. 78,413 was income from the Moulmein business. The assessee had returned a loss of Rs. 7,508. The Chettyar firm appealed against the assessment under section 30 of the Act; and the Assistant Commissioner, during the hearing of the appeal, became suspicious of the accounts. He thereupon directed the Income-tax Officer to make a further enquiry. The result of the enquiry was submitted to him and for the purpose of testing the accounts on which the assessment was based he issued a notice to the Chettyar firm to produce four sets of accounts. Of these accounts, one set was produced before him; one set was said to have been lost at the Rangoon wharf when it was being brought over from Madras, and the two other sets were alleged to be the accounts of R.M.P.R. which is said to be a separate business carved out of the E.M. firm by an arrangement with the widow of a deceased partner and to have been created for the purpose of being allotted to the share of a son whom, it was intended, the widow should adopt to her deceased husband.

At a later hearing the Assistant Commissioner was told that the agent of E.M. firm hoped to recover the accounts lost at the wharf and he also agreed to

produce the R.M.P.R. accounts which were kept at Puduvayal and not in Burma. Later the Assistant Commissioner sent to the advocates of the Chettyar firm a note wherein he asked them to explain certain points. The explanation was either not forthcoming or was not satisfactory to the Assistant Commissioner, who on the 3rd of January 1928 issued a notice to the Chettyar firm to show cause why the assessment should not be enhanced. This he was bound to do under the proviso to section 31 of the Act. He later enhanced the assessment under the head of Burma business from Rs. 78,413 to two lakhs of rupees. In his appellate judgment the Assistant Commissioner stated that to the best of his information and belief the net taxable income of the E.M. concern at Moulmein was not less than two lakhs. The Chettyar firm then took up the matter in appeal to the Commissioner of Income-tax, who dismissed the appeal. The Commissioner was then asked to refer to this Court the following questions said to arise out of the case :—

1. Whether there was evidence on which the Assistant Commissioner and the Commissioner could find that the books of account on which the assessment of the Income-tax Officer was based were not the full and complete accounts of the petitioners' business for the year.
2. Whether in these assessment proceedings the Income-tax authorities were entitled to insist on the production in Burma of the petitioners' accounts which were maintained in Puduvayal.
3. Whether the Commissioner erred in law in refusing to admit the R.M.P.R. accounts at the hearing of the appeal before him.

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4. Whether the enhancement of the petitioners' income under the head "Burma business" made by the Assistant Commissioner was such an enhancement as is contemplated by section 31 of the Income-tax Act, 1922, and in accordance with the provisions of that section.

5. Whether even assuming that the petitioners wilfully failed to produce the accounts, the Assistant Commissioner acted illegally enhancing the assessment in respect of their Burma business to two lakhs of rupees without disclosing to them the materials he had before him in support of such assessment, so as to give them an opportunity to rebut or disprove such materials.

The second question has not been pressed before us in view of our judgment in another case in which a similar point arose, where we decided that it was competent for the Commissioner to call for the production of books which were maintained outside British India.

We shall now consider the other questions seriatim.

Question 1 seems to be a question of fact disguised as a question of law. It has been repeatedly held that under section 66 of the Income-tax Act only questions of law can be referred to the Court. We have no jurisdiction to consider any question of fact and the finding of the Assistant Commissioner or the Commissioner on questions of fact is final. It has, however, been held that the question whether there was any evidence on which an Assistant Commissioner or the Commissioner could come to a finding of fact is a question of law. If there was any evidence upon which it was reasonably possible for the Commissioner

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to come to the conclusion at which he arrived, the High Court will not consider whether on that evidence that finding was correct, because the High Court is not a Court of appeal in respect of the findings of fact arrived at by the Commissioner. [See the *American Thread Co.* v. *Joyce* (1) and the cases discussed therein]. Even where, as in this case, the finding of fact is an inference from other facts the question whether such an inference has been properly drawn is not a question of law. An inference of fact drawn from other facts admitted or proved is itself a finding of fact. Thus in *Queen* v. *Special Commissioners of Income-tax* (2), the Master of Rolls in considering the question whether the Commissioners were entitled on the ground of the assessee not producing his books coupled with certain other facts to draw the inference that certain items in a schedule furnished by the assessee were wrong said :—

"It is a question of the true inference which they had to draw as a matter of evidence upon the facts which they had in evidence before them. But to draw an inference of facts from evidence before you is not a question of law at all. The inference is a question of fact just as much as the direct evidence of fact, and it would be an appeal against facts, which we are not entitled to entertain, and consequently there can be no *mandamus*. To say that these gentlemen did not assume to hear and determine the case is idle. They did. But the question is whether they did it by the exercise of something which was beyond their jurisdiction. I say, if that is a question of fact, the mere question of whether they appreciated the evidence rightly or not and whether they drew a right inference of fact, is not the subject matter of a *mandamus* at all. There would be an appeal if there was an appeal, but there is none."

In this case, the Assistant Commissioner, from the fact of non-production of certain books which the Chettyar firm was ordered to produce coupled with other facts mentioned in his order, came to the

(1) 6 Tax Cases 1. (2) 3 Tax Cases 289.

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conclusions that the books of account on which the assessment was based were not the full and complete accounts of the petitioner's business for the year of assessment. This is a finding of fact and there was ample evidence from which the Assistant Commissioner could draw the inference that the books produced were not the full and complete accounts of the business. Whether on the evidence we would come to the same conclusion or not is a question which does not arise.

It has been urged before us that as there was a partition among the members of the E.M. family there was justification or at all events excuse for the E.M. firm not producing the R.M.P.R. accounts, but the question whether this alleged partition took place and whether it afforded any excuse for the non-production of the books before the Assistant Commissioner are questions of fact. They are pieces of the evidence on a consideration of the whole of which the Assistant Commissioner arrived at his finding of fact. We therefore answer Question 1 in the affirmative and hold that there was evidence on which the Assistant Commissioner could come to the conclusion at which he arrived.

Question 3.—After the Assistant Commissioner had enhanced the assessment, and when the matter was taken up in appeal to the Commissioner, the Chettyar firm offered to produce the R.M.P.R. accounts. These ought to have been produced before the Assistant Commissioner and it was entirely in the discretion of the Commissioner whether or not he would admit further evidence at that stage. The Commissioner rightly remarks that an appellant in income-tax proceedings has no higher right in adducing fresh evidence in appeal than he would have in a civil case under Order 41, rule 27 of the Civil Procedure Code. The Chettyar firm had had ample opportunity of

producing the R.M.P.R. accounts before the Assistant Commissioner and therefore we answer this question in the negative and hold that the Commissioner did not err in law in refusing to admit those accounts at the hearing of the appeal.

As regards *Question* 4, it was suggested before us that the Assistant Commissioner had arrogated to himself the power of assessing to the best of his judgment which is given only to the Income-tax Officer under section 23 (4) of the Act. From the reference submitted by the Commissioner the argument on this question before him seems to have been that section 31 does not give the Assistant Commissioner power to ignore the materials accepted and acted upon by the Income-tax Officer and to make a summary assessment and that it does not give the Assistant Commissioner power to assess on income which according to him was not included in and not covered by the assessment appealed against.

As regards the second of the two arguments above stated we are in agreement with the Commissioner; if the argument were sound, it would mean that the Assistant Commissioner could not enhance the assessment, in any case. The Assistant Commissioner did not in fact assess any new source of income or the income of a new business. He merely enhanced the income of the Moulmein business to two lakhs of rupees.

As regards the first part of the argument, it is true that where the Assistant Commissioner is satisfied that the account books produced before him are not the complete accounts and the assessee does not produce his accounts to enable the Assistant Commissioner to arrive at a correct estimate of the income, the only course open to the Assistant Commissioner is to make an estimate of the income to the

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best of his judgment, but this does not mean that the Assistant Commissioner acts under section 23 (4) of the Act. But in a case like the present he is entitled to make an assessment to the best of his judgment. He must of course give the reasons and the basis of his assessment for the purpose of enabling the Commissioner to see whether the estimate was made according to the best of the Assistant Commissioner's judgment or was wholly arbitrary. In his appellate order the Assistant Commissioner says, "To the best of my information and belief the net taxable income of the appellant-concern's business at Moulmein during the accounting year was not less than two lakhs of rupees. It is highly improbable that any assessee and least of all an astute Chettyar money-lender, would go to the length of maintaining a double set of accounts and concealing part of his income unless the stakes were worth the hazard. Under section 31 (3) (*a*), therefore I enhance the assessment under the head "Burma business" from Rs. 78,413 to Rs. 2,00,000." It will thus be seen that, though the Assistant Commissioner states that the assessment is to the best of his information and belief, he does not mention the facts and figures on which his assessment was based. In matters of assessment where such wide powers are vested in the Income-tax officials, it is highly desirable that they should avoid even a semblance of arbitrary action. Our answer to Question 4 therefore is that if the enhancement of the Assistant Commissioner is based on materials from which he could reasonably conclude, though only as a rough estimate, that two lakhs of rupees was the income of the Moulmein business then the enhancement was legal; if, on the other hand, the enhancement was wholly arbitrary and based upon no materials, it was illegal. In view of this answer the proper course for the

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Commissioner to adopt will be to call upon the Assistant Commissioner to give the grounds on which he based his assessment and the Commissioner as an appellate tribunal can then consider whether the enhancement was justified on these materials. If in his opinion there were materials on which the Assistant Commissioner could arrive at the enhanced figure there is an end of the matter, since there is no further appeal and we cannot enter into questions of fact, namely, as to the sufficiency of those materials for the conclusion arrived at.

Question 5.—On this question the argument before us took an apparent different turn from that before the Commissioner. It was argued, first, that the Assistant Commissioner was bound in law to disclose the materials on which he came to the conclusion that two lakhs of rupees was the income of the Burma business in order to enable the Chettyar firm to meet the case. The proviso to section 31 contemplates merely a notice by the Assistant Commissioner that he proposes to enhance the income. It is not necessary under that proviso to give notice that the Assistant Commissioner proposes to enhance the assessment to any particular figure or to disclose the materials on which the enhancement is about to be made. As we have stated in the answer to the last question, it is desirable that the Assistant Commissioner, in his order enhancing the assessment, should mention the basis of the enhanced assessment but this is merely for the purpose of satisfying the appellate tribunal that the assessment was not arbitrary. It was open to the Chettyar firm when notice was issued under the proviso to section 31 to show cause against the enhancement and to convince the Assistant Commissioner that if he did enhance the income it should not be above a certain figure. Our answer

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to Question 5 is therefore that the Assistant Commissioner did not act illegally in enhancing the assessment without previously disclosing the materials on which he based the enhanced assessment.

Each party will bear his own costs in respect of this reference.

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

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Aug. 12.

C.T.V.S. CHETTYAR FIRM

v.

THE COMMISSIONER OF INCOME-TAX.*

Income-tax Act (XI of 1922), ss. 13, 63, 66—Assessment made under proviso to s. 13—Assessee's right to show income included in assessment of subsequent year already included in previous assessment—Such question a question of law for the High Court.

Where the computation of income, profits and gains for a particular year has been made under the proviso to s. 13 of the Income-tax Act "upon such basis and in such manner as the Income-tax Officer may determine" the assessee is entitled to show that income, profits or gains included in the assessment for a subsequent year were included in that computation, and that it is a question of fact, to be decided on the evidence in the particular case, whether he succeeds in showing that they were so included

Where the Commissioner is of opinion, not basing his opinion on any facts that it is impossible to show that income subsequently assessed was included in the computation on which an earlier assessment was based or where he holds that where an assessment has been based on a computation under the proviso to s. 13 of the Act, an assessee is not entitled to show that income included in a subsequent assessment was included in the computation, then both are questions of law which the High Court must decide.

Venketram for the applicant.

Gaunt (Officiating Government Advocate) for the Crown.

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* Civil Miscellaneous Application No. 129 of 1928 and Civil Reference No. 9 of 1929.