

INCOME-TAX REFERENCE.

*Before Sir Guy Rutledge, Kt., K.C., Chief Justice, Mr. Justice Carr and
Mr. Justice Brown.*

CHAN LOW CHWAN

v.

THE COMMISSIONER OF INCOME-TAX.*

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Feb. 18.

Income-tax Act (XI of 1922), ss. 13, 23—Assessee's statement whether fraudulent and incomplete, a question of fact for Income-tax Officer alone to decide—False return and no return—Income-tax Officer's power to assess in case of false return—Dishonest assessee's position—Notice of particulars of objections—Assessee, when entitled and when not to such notice.

Whether a statement furnished by an assessee is incomplete and fraudulent or not is a question of fact for the determination of the Income-tax authorities and not for the Court.

A party who has made a false return is in no better position than one who has failed to make any return. If the statement furnished by the assessee is found to be not genuine by the Income-tax Officer, the latter is entitled to adopt whatever method he thinks best, and an assessee who does not choose to furnish an honest statement, cannot complain if a random assessment is made upon him by the Crown.

MacPherson & Co., v. Moore, 6 Tax Cases, 114—referred to.

Where the objection of the Crown is that an assessee's accounts are incomplete particulars of the objection ought to be given in a notice to the assessee, but where his accounts are not genuine, the Income-tax Officer is under no obligation to set out all his reasons which led him come to such a conclusion.

N. M. Cowasjee and Daniel for the applicant.

A. Eggar (Government Advocate) for the Crown.

On the application of the assessee for a *mandamus* under section 66 (3) of the Income-tax Act, the Court made the following order which sets out the facts of the case and the question of law that arose :—

PRATT, OFFG. C.J. and CUNLIFFE, J.—This is an application directed against the Commissioner of Income-tax, put forward by one Chan Low Chwan under

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* Civil Miscellaneous Application No. 13 of 1928.

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the provisions of section 66, sub-section 3 of the Indian Income-tax Act, 1922. The applicant seeks to have a case stated on certain points of law in the following circumstances :—

Chan Low Chwan is engaged in the business of trading in paddy and real property. The firm has a number of agencies outside Rangoon for the purchase of paddy. On the 31st of January 1927, he was assessed to income-tax by the Income-tax Officer, Eastern Circle, Rangoon Town. It is not necessary at this stage to go into the details of the assessment. Suffice it to say that the books put forward by him were rejected *in toto* as the officer came to the conclusion that they did not represent the proper financial state of the business. Afterwards an assessment was made on what appears to us to be an insufficient and arbitrary basis. There is no doubt that officers in the Income-tax Department have a right, if they are confronted by a refusal to produce any books at all or any information as to the earnings of an assessee, to assess the defaulter as best they can. Even so, one would imagine that such assessment must be based on some materials if they are available. In this case no further enquiry appears to have been set on foot. After the rejection of the books the officer, to use his own words, made his assessment "to the best of my judgment" after carefully considering the facts before him under section 23 (3) of the Act. In fact, the books show a net loss of Rs. 72,978-14. The officer appears to have made out a case to his own satisfaction on no fresh material, and to have assessed the assessee to a profit of Rs. 85,000 as far as the paddy trading side of the business was concerned. Taking into account also the profits computed to have been made upon the house property owned by the firm on a net basis, the total income of net profit was

brought up to a figure of Rs. 1,16,460. The assessee was accordingly charged with income-tax Rs. 10,980 and super-tax Rs. 4,668. On appeal to the Assistant Commissioner of Income-tax, this assessment was confirmed.

On an application to state a case put forward to the Commissioner of Income-tax, the application was refused on the ground that no questions of law arose under section 66, sub-section 2.

—The points of law put forward in these circumstances for us to consider are as follows :—

- (i) Whether an Income-tax Officer can reject the accounts of an assessee as not being genuine and proceed to make an estimated assessment without giving the assessee an opportunity to substantiate and explain his accounts and to meet specifically the grounds on which the Income-tax Officer seeks to base or draw his inferences and base his conclusions.
- (ii) Whether an assessment under section 23 (3) can be made in the form of a lump sum estimate without any details to show how the amount determined upon was arrived at.
- (iii) Whether the interest paid on loans raised on the equitable mortgage of property can be disallowed from property income because the loans thus raised were utilized in business.

The first suggested point of law really raises two questions : (a) whether an estimated assessment of an arbitrary nature on insufficient evidence can be made in the circumstances ; and (b) whether after accounts have been rejected an assessee should not be given a chance after due notice of explaining the accounts put forward. Any conclusion come to by a person

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occupying a judicial position on insufficient evidence automatically raises a point of law for the consideration of an appellate tribunal. See the case of *Usher's Wiltshire Brewery, Limited v. Bruce* (1) and the judgment of Lord Sumner therein. As to notice being required when books are rejected, there is the decision of a Divisional Court at Lahore, *Kesri Das v. The Income-tax Commissioner, Punjab and North West Frontier Province, Lahore* (2). This is a case very much in point. It was there held that on the ~~Income-tax~~ Officer being dissatisfied with the accounts it was his duty to serve on the assessee a notice under section 23 (2) of the Indian Income-tax Act requiring him to produce any further evidence on which he (the assessee) might rely in support of the return. We agree with this decision and are unable to find that any such course was taken under section 23 (2) in this case. A failure to take this step seems to us to raise a second point of law. We are not however inclined to consider the alleged points of law (ii) and (iii) referred to above as genuine points of law under section 66 (3). We are rather of the opinion that such details of assessment are matters for the interior administration and practice of an Income-tax Office.

Accordingly we allow this application and direct the Commissioner of Income-tax, Rangoon, to state a case on the two following points :—

- (1) Can an Income-tax Officer having rejected the accounts of an assessee as not being genuine proceed to make an assessment (i) on insufficient material and (ii) without giving notice of his dissatisfaction to the assessee under section 23 (2) of the Act ?

(1) [1915] A.C. 433.

(2) (1926) 7 Lah. 138.

[The decision of the Full Bench on the case stated by the Commissioner of Income-tax is as follows :]

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RUTLEDGE, C.J., CARR and BROWN JJ.—In compliance with an order of this Bench in Civil Miscellaneous Case No. 13 of 1928, the Commissioner of Income-tax, Burma, has stated a case on the following points of law :—

Can an Income-tax Officer having rejected the accounts of an assessee as not being genuine, proceed to make an assessment (i) on insufficient material and (ii) without giving notice of his dissatisfaction to the assessee under section 23 (2) of the Act?

In his statement of the case, the Commissioner reviews the circumstances attending the assessment of the present respondent since the year 1922-23. From this, it appears that the accounts at any rate since the year 1924-25 have been rejected as incomplete and fraudulent, and merely made up for income-tax purposes. The Commissioner sets out the grounds on which the Income-tax authorities were satisfied that the statement of accounts was incomplete and fraudulent and we consider that they had good grounds for forming such an opinion. Whether the statement is incomplete and fraudulent or not is a question of fact for the determination of the Income-tax authorities and not a question on which this Bench can interfere, and, indeed, from the wording of the reference, this seems to be taken for granted, as it assumes that the Income-tax Officer was within his rights in rejecting the accounts as not being genuine.

The first question then is . Can he proceed to make an assessment on insufficient material? We think on this point the quotations which the Commissioner has made from the case of *MacPherson &*

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Company v. Moore (1), are very much to the point. In that case, no doubt *MacPherson & Company* had failed to make any return, but we quite fail to see why a party who has made a false return should be in a better position than one who has failed to make any return. Mr. Cowasjee urges that section 13 only applies to the method and does not empower the Income-tax authority in any way. We cannot see any such limitation in the words of the proviso, which run as follows:—

“Provided that if no method of accounting has been regularly employed *or if the method employed is such that in the opinion of the Income-tax Officer the income, profits and gains cannot properly be detected therefrom*, then the computation shall be made on such basis and in such manner as the Income-tax Officer may determine.”

In this case, the Income-tax Officer clearly considered that the income, profits and gains could not properly be detected from respondent's statement, since he decided that that statement was not genuine. He was consequently entitled to adopt whatever method he thought best. Adapting the words of the Lord President in *MacPherson's* case already alluded to “If Chan Low Chwan does not choose to make an honest statement of account so that the amount of profits may be strictly determined, he cannot complain if a random assessment is made upon him by the Crown”. For years, according to the Commissioner, the firm has made defective and dishonest returns for the purpose of income-tax and it is to be hoped that it will at last dawn upon them that honesty is the best policy and that this Court will not aid them in reducing the administration of the Income-tax law to a nullity.

The second question in the reference is : Can the Income-tax Officer make an assessment without giving notice of his dissatisfaction to the assessee under section 23 (2) of the Act? On this point, the Commissioner states that two notices were issued under section 23 (2) and also an informal notice requiring the assessee's attendance. The assessee was examined on two occasions and his statements were recorded. He admits that the assessee was not questioned on the specific points which form the grounds for the officer rejecting the accounts. The controversy on this point seems to come to this : For the assessee it is urged that the Income-tax Officer should give him particulars in respect of the grounds on which he thinks that the statement was not genuine or on which it is incomplete. We may say that there is no such provision in the Act and that the Government Advocate's observation that it was a matter for the legislature rather than the Court seem to be justified. In an ordinary case, we have no hesitation in saying that such particulars ought to be given in a notice, especially in cases where the objection is that the accounts are incomplete. Here, however, where the finding is that the accounts of the assessee in previous years as well as in this year were not genuine but were merely cooked for income-tax purposes, we do not consider that the Income-tax Officer was under any obligation either in law or in common fairness to set out all the reasons which led him to come to such a conclusion.

We accordingly agree with the answers given by the Commissioner in respect of both questions and we order the respondent to pay the Commissioner's costs, seven gold mohurs.

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