

FULL BENCH.

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

1929

Jan. 3.

COMMISSIONER OF INCOME-TAX (BURMA)

v.

R.M.P. CHETTYAR FIRM.*

Income-tax Act (XI of 1922), ss. 22 (2) and (4), 23 (4)—Compliance by assessee with notice to make a return of his income, but non-compliance with notice to produce accounts, effect of—Power of the Income-tax officer to make an assessment himself.

Held, that after an assessee has made a return of his income under section 22 (2) of the Income-tax Act, he can be called upon to produce his accounts under s. 22 (4), and if he fails to do so, the Income-tax officer has the power to make an assessment himself under the provisions of section 23 (4) of the Act.

In the matter of Chandra Sen Jaini, 50 All. 589; *In the matter of Harmukhrai Dulichand*, 32 C.W.N. 710; *Ram Khelawan v. Commissioner of Income-tax*, 7 Patna 852—*followed*.

A. Eggar (Government Advocate) for the Crown.

Foucar for the respondent.

RUTLEDGE, C.J., CARR and BROWN, JJ.—This is a reference made by the Commissioner of Income-tax under section 66 of the Indian Income-tax Act (XI of 1922), the question referred being :—

“After an assessee has made a return of his income under section 22 (2), can the assessment be made under section 23 (4) of the Act for non-compliance with the terms of a notice under section 22 (4) ? ”

The essential question raised in the argument before us is whether a notice under section 22 (4) may or may not be issued by the Income-tax authorities after the assessee has made a return of his income as required by a notice under section 22 (2).

The assessee's contention that a notice under section 22 (4) can be issued only before a return has been made receives some support from the case of *Brij Raj Ranglal v. Commissioner of Income-tax* and that of *Khushi Ram Karam Chand v. Commissioner of Income-tax*, neither of which appear in the authorised reports. But the first of these decisions has been expressly overruled by a Full Bench of five judges of the same Court—the High Court of Patna—in *Ram Khelawan Ugam Lal v. Commissioner of Income-tax* (1), and the same view was taken by the two other judges of the Court who referred the question to the full bench. Thus seven judges of that Court are of opinion that the decision in *Brij Raj's* case was wrong.

The same question has been considered by the High Court of Calcutta in *In the matter of Messrs. Harmukhrai Dulichand* (2), and by the High Court of Allahabad in *In the matter of Chandra Sen Jaini* (3) and both of these Courts are in agreement with the decision in *Ram Khelawan's* case. That being so the weight of authority is very strongly against the contention advanced by the assessees. The question has been very fully discussed in the judgments quoted and we agree with the arguments there set out and with the decision arrived at. We consider it unnecessary, therefore, to enter into further discussion of the question.

We answer the question referred in the affirmative.

The assessee must pay the costs of this reference—Advocate's fee five gold mohurs.

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(1) (1928) 7 Patna 852.

(2) (1928), 32 C.W.N. 710.

(3) (1928) 50 All. 589