

CIVIL REFERENCE.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

NANAK CHAND-FATEH CHAND, Petitioners

versus

COMMISSIONER OF INCOME-TAX, LAHORE,
Respondent.

1926

Jan. 6.

Civil Reference No. 41 of 1925.

*Indian Income-tax Act, XI of 1922, section 2 (11) (b)—
Whether an assessee whose business has not been in existence
for a whole year previous to the 1st April is liable to tax for
the next year—"Commercial year" and "previous year"—
explained.*

The assessee firm commenced business on the 18th of April 1923. In April 1924 it was called upon to furnish a return of its total income during the previous year, i.e. during the year ending the 31st March 1924, but submitted a statement of its profits for the period of twelve months, 18th of April 1923 to 17th of April 1924, and contended that it was not liable to pay income-tax for the year 1924-25, as the business had not been in existence for a complete year before the 1st of April 1924.

Held, that the Income-tax authorities would have been justified in assessing for 1924-25 on the profits realised during the 11 months 13 days of 1923-24, because though the firm was not in existence for the first fortnight of 1923-24 nevertheless the profits realised during the broken period were the profits realised in the course of the whole year 1923-24.

Held also, that there was nothing illegal in the Income-tax authorities not adopting this course, but, in accordance with the provisions of section 2 (11) (b) of the Income-tax Act, accepting as the accounting period the time from the 18th of April 1923 to the 17th of April 1924.

The expression "commercial year" is not defined in the Act, but it means any period for which the accounts of the concern are made up, and such period, provided it satisfies the conditions laid down by the Central Board of Revenue,

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may be deemed to be the previous year on which the assessment of any given year is based.

Case referred by Alan Mitchell, Esquire, Commissioner of Income-tax, Punjab and North-West Frontier Province, Lahore, with his letter No. 505-J.M./495, dated the 2nd September 1925, for orders of the High Court.

JAGAN NATH AGGARWAL, for Petitioners.

CARDEN-NOAD, Government Advocate, for respondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—This is a reference under section 66 (2) of Indian Income-tax Act, XI of 1922, by the Income-tax Commissioner, Punjab.

The assessee firm commenced business on the 18th of April 1923. In April 1924 the Income-tax Officer required the firm to furnish a return of its total income during the previous year, *i.e.*, during the twelve months ending the 31st of March 1924. In compliance with this notice the firm, instead of declaring its profits for the 11 months and 13 days ending the 31st of March 1924, submitted a statement of its profits for the period of twelve months, 18th of April 1923 to 17th of April 1924, and contended that it was not liable to pay income-tax for the year 1924-25 on the ground that the business had not been in existence for a complete year before the 1st of April 1924. In other words, the assessee's contention was that the firm was not liable to pay income-tax either in respect of the 11 months and 13 days ending on the 31st of March 1924 or for the whole year beginning 1st of April 1924 and ending 31st of March 1925.

Admittedly no income-tax is recoverable from the firm in respect of the period 18th of April 1923 to 31st of March 1924, nor has it been assessed to income-tax

in respect of that period, and the contention that no income-tax is payable in respect of the period 1st of April 1924 to 31st of March 1925 is not only absurd but is founded on no provision of law. In our opinion the Income-tax authorities would have been justified in assessing for 1924-25 on the profits realised during the 11 months and 13 days of 1923-24. It is true that for the first fortnight of 1923-24 the firm made no profits, because it was not in existence; at any rate, was not working; nonetheless the profits realised during that broken period were the profits realised in the course of the whole year 1923-24.

The Income-tax authorities, however, did not adopt this course, but in accordance with the provision of section 2 (11) (b) of the Act accepted as the accounting period the time from 18th of April 1923 to 17th of April 1924. Before us it is contended that this course was unjustified inasmuch as that period (18th of April 1923 to 17th of April 1924) cannot be called a commercial year. The contention appears to us to be futile. There is no definition of the expression "commercial year" in the Act and we hold it to mean any period for which the accounts of the concern are made up, and such period, provided it satisfied the condition laid down by the Central Board of Revenue, may be deemed to be the previous year on which the assessment of any given year is based.

We consider that the previous year determined by the Commissioner of Income-tax is justified by the instructions of the Central Board of Revenue and his action is entirely legal. The costs of these proceedings shall be paid by the objecting firm.

A. N. C.

Application rejected.

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