

INCOME-TAX REFERENCE.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Maung Ba.

COMMISSIONER OF INCOME-TAX, BURMA

v.

N. N. BURJORJEE.*

1931

Feb. 19

Income-tax Act (XI of 1922), ss. 23, 34—Income that "has escaped assessment"—Assessment proceedings duly commenced—Proceedings not completed at close of year—Notice under section 34, whether necessary.

Section 34 of the Income-tax Act applies to income which has escaped assessment, that is to say, when a person has not been assessed at all during the year or when some portion of his income has not been included in his assessment. The section does not apply to cases in which assessment proceedings have duly been commenced in the course of the year of assessment, although it may be that they have not been completed within that year.

Raja Rajendra Narayan v. Commissioner of Income-tax, Behar and Orissa, 2 Income-tax Cases 82—referred to.

The facts of the case and the questions referred to the High Court appear in the judgment.

A. Eggar (Government Advocate) for the Crown. Where income has been assessed and proceedings completed, then only section 34 can apply; it is not applicable where proceedings are yet open. There is no time limit prescribed for the completion of an assessment. See *Rajendra Narayan v. Commissioner of Income-tax, Behar and Orissa, 2 Income-tax Cases 82.*

Foucar for the assessee. Section 34 is the limitation section of the Act. Income is either assessed or has escaped assessment. If at a particular date, *viz.* at the end of the year, assessment is not made, the income has escaped assessment. Assessment is not the whole proceedings; it is only an order. According to section 22 of the Act, proceedings must be initiated in the year. If in August 1930 the Income-tax Officer came

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to know that some income received in 1926 had escaped assessment, he could not claim that under section 34. The intention of the section is to complete all assessment within the year. The observations of Dawson Miller, C.J., in the case relied on by the Crown apply to section 29 where there is no period of limitation. Proceedings preliminary to assessment abate at the end of the year. There must be a time limit within which the order of assessment must be made under section 23 of the Act.

PAGE, C.J.—In our opinion this is a plain case.

On the 1st of April 1927 a notice was served upon the assessee under section 22 (2) of the Income-tax Act calling upon him to make a return of income as therein provided for the year of assessment 1927-28 in respect of the income received in the previous year. On the 15th of June 1927 further notices were served upon the assessee under sections 22 (4) and 23 (2) of the Act. It does not appear that any further steps were taken in the matter by the Income-tax authorities until the 17th of July 1930, when a further notice under section 23 (2) was served upon the assessee. In due course an assessment was made on the 8th of August 1930, and the correctness of the amount of the assessment has not been challenged. The assessee appealed against the order of assessment to the Assistant Commissioner, but his appeal was dismissed. On the application of the assessee the Commissioner of Income-tax under section 66 (2) of the Act has referred for the decision of the High Court the following questions of law arising out of the order of the Assistant Commissioner :—

(1) " Whether upon the true construction of section 34 of the Indian Income-tax Act, 1922, a time limit is fixed for all original or first assessments under section 23 of the Act, and if the answer to this is in the affirmative whether such time limit is not one year ending with the last day of the year of assessment? "

2) " Whether an assessment for any year can be made after the close of the year of assessment without any valid notice being issued to an assessee under section 34 of the Act ? "

Section 34 runs as follows :—

" If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year or the end of the year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be."

Now, the question that falls for determination is, what is the meaning of the word " escaped assessment " in section 34 ? On behalf of the assessee it is contended that assessment proceedings, at any rate up to the stage at which the order of assessment is passed under section 23 (4), must be completed before the end of the year of assessment, *i.e.*, the year in which the tax is payable, and that otherwise the assessment proceedings *ipso facto* abate. In our opinion this contention is unwarrantable, and cannot be accepted.

We are of opinion that section 34 is applicable to cases in which either no assessment at all has been made upon the person who received the income, profits or gains liable to assessment, or where an assessment has been made in the course of the year, but some portion of the income, profits or gains of such assessee for some reason or other has not been included in the order of assessment; such income is income which has " escaped assessment " in the year, and falls within the ambit of section 34 of the Act.

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Section 34 does not apply to cases in which assessment proceedings have duly been commenced in the course of the year of assessment, although it may be that they have not been completed within that year.

The view that we take is supported by certain observations of Dawson Miller, C.J., in *Raja Rajendra Narayan Bhanja Deo of Kanika v. Commissioner of Income-tax, Behar and Orissa* (1). His Lordship observed :—

“ It is quite possible that in certain cases no demand could be made within the actual year for which the tax is payable. Provision is made for disputes which may arise as to the acceptance or rejection of the assessee's return. If his return is not accepted then an enquiry takes place, evidence may be demanded of him, and much time may be expended in carrying on the enquiry, and it is quite possible that such enquiry would not terminate until after the year of assessment, and I do not think it can be suggested that because the ordinary form prescribed for such a demand contemplates that it will be issued during the current year of assessment, it is tantamount to an enactment that it cannot be issued afterwards.”

An argument has been presented on behalf of the assessee with a view to establish that there must be a time limit within which the order of assessment must be made under section 23 of the Act. We decline to consider such an argument upon this reference, for the Court is confined to a consideration of the questions propounded for its determination in the order of reference by the Commissioner of Income-tax.

For the reasons that we have stated we are of opinion that the answer to the first question set out in the order of reference is in the negative. The second question does not arise. Costs six gold mohurs.

DAS, J.—I agree.

MAUNG BA, J.—I agree.