

out in the order of the 28th of March 1930. Indeed, the learned advocate for the assessee frankly and properly conceded that there was evidence to justify the order that the Assistant Commissioner then passed.

In these circumstances no question of law arises, and we answer the reference in that sense. The assessee upon whose application the reference has been made must pay the costs of the Commissioner, the advocate's fee being assessed at 10 gold mohurs.

1930
 COMMISSIONER OF
 INCOME-TAX,
 BURMA
 v.
 A.K.R.P.L.A.
 CHETTYAR
 FIRM.

INCOME-TAX APPLICATION.

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

A.K.R.P.L.A. CHETTYAR FIRM

v.

THE COMMISSIONER OF INCOME-TAX, BURMA.

1930
 Dec. 17.

Income-tax Act (XI of 1922) S. 66—Reference to High Court—Appellate order under s. 31 or 32—Reference limited to questions of law arising out of order.

S. 66 (2) of the Income-tax Act provides for a reference to the High Court of any question of law arising out of an order made pursuant to s. 31 or 32 of the Act.

Where an assessee appealed to the Assistant Commissioner against the order of an Income-tax Officer under section 27 refusing to cancel an assessment made under section 23 (4), on the ground that he had not proved that there was sufficient cause for not producing his accounts in time, and the Assistant Commissioner held that the assessee had failed to show sufficient cause.

Held that the only question of law that can arise is whether there was evidence upon which the Assistant Commissioner could have based his order, and the question whether the assessment as made was valid was not a question of law that could arise out of the order of the Assistant Commissioner.

Daniel for the assessee.

A. Eggar (Government Advocate) for the Crown.

PAGE, C.J., DAS AND MAUNG BA, JJ.—In Civil Miscellaneous Application No. 129 of 1930 the same assessee in the circumstances which we have stated

* Civil Miscellaneous Application No. 129 of 1930.

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A.K.R.P.L.A.
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FIRM
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BOMBAY.

PAGE, C.J.
DAS AND
MAUNG
B.A.JJ.

in the order that has been passed in Civil Reference No. 15 of 1930, applied to the Commissioner of Income-tax under section 66, sub-section (2), that he should state a case for the decision of the High Court with respect to the following further questions of law which he contended arose out of the order of the Assistant Commissioner of the 28th of March 1930 :—

(a) Whether the officer was justified in declining to examine the Rangoon accounts at all because the Shan States accounts were not produced, considering the independent character of the two branches.

(b) Whether an assessment of Rs. 1,20,000 by a mere computation and without details when the assessee showed a loss is a best of judgment assessment under section 23 (4) of the Act, or on the other hand, considering the reasoning of the officer, a penal assessment.

The Commissioner refused to state a case under section 66 (2) in respect of either of these questions. The grounds upon which the Commissioner based his refusal were as follows :—

"Section 66 (2) provides for a reference to the High Court of any question of law arising out of an order under section 31 or 32, *i.e.*, an appellate order. The second and third questions reproduced above do not arise out of the Assistant Commissioner's appellate order, dated the 28th March 1930. In fact the second question was not raised in the appellate proceedings at all. The third question cannot, and in fact does not, arise from the appellate order, since the assessment having been made under section 23 (4), there is no appeal against the assessment as such, *vide* the proviso to section 30 (1) of the Act. Thus neither of these two questions can form the subject of a reference under section 66 (2) of the Act."

In these circumstances the assessee has applied to the High Court under section 66 (3) for an order requiring the Commissioner to state a case in respect of the two questions of law set out above, and to refer them for decision to the High Court.

In our opinion the application is wholly misconceived, and must be dismissed.

As was stated in the order that was passed in Civil Reference No. 15 of 1930 the only question of law that could arise out of the order of the Assistant Commissioner of the 28th of March 1930 was whether there was any evidence upon which the Assistant Commissioner could base his order of the 28th of March 1930.

The order of the 28th of March 1930 was made in an appeal under section 30 (1) from a refusal of the Income-tax Officer under section 27 to cancel the assessment and proceed with a fresh assessment upon the ground that he was not satisfied that there was sufficient cause shown by the assessee preventing him from producing the Shan States accounts pursuant to the notice duly served on him in that behalf under section 22 (4). In such an appeal the question whether the assessment was properly made or not was immaterial, and it was equally immaterial whether the notice, which admittedly was served upon the assessee, calling upon him to produce the Shan States accounts, was valid or not. Neither of these two questions arose or could arise out of such order, and the learned advocate for the assessee again frankly and properly conceded that that was so. In these circumstances there was no room for a reference to be made to the High Court in respect of such questions either by the Commissioner *suo motu*, or on an application duly made in that behalf by the assessee, or otherwise.

In our opinion this application is misconceived, and must be dismissed with costs. We assess the advocate's fee at five gold mohurs.

1930

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INCOME-TAX,
BURMA.PAGE. C.J.,
DAS AND
MAUNG
BA. JJ.