

## INCOME-TAX REFERENCE.

*Before Sir Arthur Page, K1., K.C., Chief Justice, Mr. Justice Das and Mr. Justice Maung Ba.*

## COMMISSIONER OF INCOME-TAX, BURMA

v.

## A.K.R.P.L.A. CHETTYAR FIRM.\*

1930

Dec. 17.

*Income-tax Act (XI of 1922) sections 23 (4), 27, 30, 66—Evidence showing no sufficient cause for non-compliance with notice under section 22 (2)—Question of law under section 6.*

Where there is evidence upon which the Assistant Commissioner can find that there was no sufficient cause preventing an assessee from producing the accounts he was required to produce under section 22 (2) of the Income-tax Act, and upon that ground refuses to cancel the assessment made under section 23 (4), there is no question of law that can be referred to the High Court under section 66.

*A. Eggar* (Government Advocate) for the Crown.

*Daniel* for the assessee.

PAGE, C.J., DAS AND MAUNG BA, JJ.—This is a reference by the Commissioner of Income-tax, Burma, under section 66 (2) of the Income-tax Act. The material facts are simple and lie within a narrow compass.

It appears that the A.K.R.P.L.A. Chettyar Firm, Rangoon, are a Hindu undivided family carrying on a money-lending business at Rangoon, and also at Hsipaw and Kyaukme in the Shan States. The business is carried on as a whole, and in previous years has been assessed to income-tax as a whole. The Rangoon branch is managed by a member of the family, the branches at Hsipaw and Kyaukme by local agents. The manager of the Rangoon business as in previous years was duly served with a notice requiring him to furnish a return showing the total income of the family

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under section 22 (2), and eventually on the 18th of May 1929 a notice was served upon the assessee under section 22 (4) demanding the production of the accounts of the Rangoon, Hsipaw and Kyaukme branches of the business. Under the notice the assessee was required to produce the accounts in Rangoon on or before the 10th of June 1929. The assessee, however, did not comply with the notice duly served upon him under section 22 (4). On several occasions an extension of time was granted to the assessee within which he was at liberty to produce the accounts of the several branches of the business. The assessee, when applying for these extensions, did not suggest that there was any difficulty in producing the Shan States accounts, but stated that there had been difficulty in producing the Rangoon accounts, which it was alleged on one occasion had not been compiled, and on another had been deposited in one of the Civil Courts. On the 16th of October 1929 the Income-tax Officer granted a further extension of time until the 5th of November, but at the same time he warned the assessee that even if the Rangoon accounts were not available on the 5th of November, at any rate the accounts of the Hsipaw and Kyaukme branches must be forthcoming on that date, and that in default he would be compelled to make an assessment under section 23 (4) of the Act. On the 5th of November the assessee produced the Rangoon accounts but failed to produce the Shan States accounts, and applied for a further extension of time for two months within which to do so. The Income-tax Officer granted a peremptory extension until the 20th of November 1929. On that date, however, the Shan States accounts were not produced, and the pretext for their non-production was that the assessee's representative in Burma was in correspondence with the members of the firm in India with respect to these accounts, and

that no instructions had been received as yet from India. In the circumstances the Income-tax Officer refused to grant any further extension of time within which the assessee should be at liberty to produce the accounts, and proceeded to make the assessment as best he could under section 23 (4) of the Act.

It is to be observed that under the proviso to section 30 (1) "no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27."

The assessee then applied under section 27 that the Income-tax Officer should cancel the assessment and proceed to make a fresh assessment, upon the ground that the assessee had been prevented by sufficient cause from complying with the notice issued under sub-section (4) of section 22. The Income-tax Officer, having heard the assessee, in a considered order, held that no sufficient cause had been shown by the assessee preventing him from complying with the notice calling upon him to produce the Shan States accounts, and he dismissed the application under section 27. From the refusal of the Income-tax Officer to cancel the assessment and proceed with a fresh assessment under section 27 the assessee, under section 30, sub-section (1), "objecting to the refusal of the Income-tax Officer to make a fresh assessment under section 27" appealed to the Assistant Commissioner against such refusal. On the 28th of March 1930 the appeal was dismissed. In the course of his order the Assistant Commissioner held that "the appellant-firm had had ample opportunity for making arrangements to produce the Shan States books. I can only attribute the failure finally to produce them to the deliberate intention of the appellant not to produce the books. I support the Income-tax Officer's refusal to set aside the assessment, and to make a fresh assessment." The assessee thereupon applied to the

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Commissioner under section 66 (2) that he should draw up a case and refer it with his opinion thereon to the High Court in respect *inter alia* of the following questions of law which he alleged arose out of the Assistant Commissioner's order passed under section 31, *vis* :—

"Whether, considering all the circumstances of the case, the petitioner was prevented by sufficient cause from producing the Shan States accounts; and whether the officer was justified in making the assessment under section 23 (4)."

The Commissioner granted the said application, and referred the first question for the decision of the High Court under section 66, sub-section (2), in the following form: "Was the discretion given by section 27 properly exercised in this case?" It is this reference which we are invited to consider in Civil Reference No. 15 of 1930.

Now, as at present advised, we should not be disposed to assent to the view that the question of law which arose out of the order of the Assistant Commissioner was propounded in the proper form. In our opinion the sole question of law which could arise out of the order of the Assistant Commissioner of the 28th of March 1930 was :—

"Was there any evidence upon which the Assistant Commissioner could find that there was no sufficient cause preventing the assessee from producing the Shan States accounts on the 20th of November 1929?"

If any question of law could arise (contrary to the view that we take) as to whether in arriving at that conclusion the Assistant Commissioner properly exercised the discretion with which he was invested, it is abundantly clear that in passing the order of the 28th of March 1930 he exercised a thoroughly sound discretion in the matter. But in our opinion it is sufficient to dispose of this reference that we should hold, as we do hold, that there was ample evidence upon which the Assistant Commissioner could have arrived at the conclusion set

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.

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### INCOME-TAX APPLICATION.

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*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.