

be taken until the decree-holder files a certificate under section 31 (2) of Punjab Act II of 1903. The petitioner will have his costs here.

A. N. C.

Revision accepted.

CIVIL REFERENCE.

Before Mr. Justice Zafar Ali and Mr. Justice Jai Lal.

GANESH DAS, Petitioner,

versus

THE COMMISSIONER OF INCOME-TAX,

Respondent.

Civil Reference No. 24 of 1926.

Indian Income-tax Act, XI of 1922, section 34—Income assessed in hands of wrong person—whether “escaped” assessment—Limitation.

Where the income was assessed within limitation but in the hands of an assessee to whom it was subsequently found not to belong—

Held, that as the income had for the purposes of section 34 of the Act escaped assessment so far as the person who received it was concerned, whatever might be the reason for the Income-tax Officer's failure, that income could neither be re-assessed under section 34, nor could action be taken under section 35, after the expiry of the period of limitation prescribed.

Case referred by M. L. Darling, Esquire, Commissioner of Income-tax, Lahore, with his letter No. 505-J. M., dated the 3rd/4th June 1926, for the orders of the High Court.

FAKIR CHAND and BADRI DAS, for Petitioner.

JAGAN NATH, AGGARWAL, for Respondent.

The Order of the Court was delivered by :—

ZAFAR ALI J.—This is a reference under section 66 (1) of the Income-tax Act. The learned Income-

tax Commissioner has propounded the following questions of law :—

(1) Does the Indian Income-tax Act (XI of 1922) impose any period of limitation within which the Commissioner's powers of review under section 33, in respect of an assessment proceeding must be exercised?

(2) If so, is the Commissioner debarred from reviewing the present case?

We have recently held in reference *No. 20 of 1926* (1) that the Income-tax Commissioner's powers under section 33 are subject to the limitation imposed by section 35, and the learned Commissioner has come to the same conclusion with regard to his question No. 1. In respect of question No. 2 he argues thus :—

“ The second question, on the other hand, I would answer in the negative as section 34 applies only to income, profits or gains that ‘ have escaped assessment,’ and in this case the income to be assessed, did not escape assessment in the year in question. All that has occurred is that it has been assessed in the hands of an assessee to whom it was subsequently found not to belong. It can hardly, I think, have been intended that income should escape assessment simply because an error of this kind was not established till after the period of limitation specified in section 34 had expired.”

This argument does not appear to us to be sound. Whatever may be the reason for which the Income-tax Officer failed to assess the income within the period prescribed by law, he is not competent to assess it after the expiration of that period of limitation. So in the present case, no action could be taken in 1926 either under section 33 or 34 in respect of

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an income derived during the accounting period of 1921-22. After all, the Income-tax department itself is responsible for this result. The income escaped assessment so far as the person who received it was concerned.

We therefore answer the second question in the negative.

N. F. E.

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
 Broadway.*

1927
 Feb. 4.

NIADAR MAL (JUDGMENT-DEBTOR) Appellant

versus

RATTAN LAL (DECREE-HOLDER) Respondent.

Letters Patent Appeal No. 300 of 1925.

*Civil Procedure Code, Act V of 1908, section 144—
 Restitution—of payment made—not, in execution of any de-
 cree or in consequence of any decree—applicability of the
 section.*

One R. L. obtained a final decree against N. M. in respect of one of two businesses in which they were partners. That decree also declared that N. M. alone was responsible for the claim of one Gustav Spielmann. During the pendency of an appeal against that decree in the High Court the Custodian of Enemy Property took proceedings against both R. L. and N. M. in connection with Gustav Spielmann's claim and obtained payment of a half of the claim from each. Subsequently R. L. succeeded in persuading the Custodian to refund to him the amount thus paid on his giving security for its repayment if repayment should become necessary and N. M. was made to pay to the Custodian the entire amount due to Gustav Spielmann. The High Court set aside that portion of the decree which declared that N. M. alone was responsible to Gustav Spielmann. N. M. then applied under