

CIVIL REFERENCE.

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

JESA RAM, Petitioner

versus

THE COMMISSIONER OF INCOME-TAX,
Respondent.

1927

Jan. 15.

Civil Reference No. 20 of 1926.

Indian Income-tax Act, XI of 1922, sections 33, 34 and 35—Review by Commissioner—Rectification of Mistake—Income which has escaped assessment—Limitation—extension of—whether permissible.

Held, that as there is no express provision enabling the Income-tax Commissioner to pass orders prejudicial to an assessee without any limit of time, his powers of review under section 33 of the Income-tax Act are subject to the same restriction in regard to limitation as those of an Income-tax Officer under section 35; and therefore, a mistake in assessment could not be rectified to the prejudice of an assessee after the expiry of one year from the date of the demand.

Held further, that even if the case were governed by section 34 which enables an Income-tax Officer to re-assess income, profits or gains when they have escaped assessment or have been assessed at too low a rate, the same remarks would apply *mutatis mutandis*, as under that section also the powers must be exercised within one year.

Held also, that the Income-tax Department could not claim an extension of limitation on the plea that an application for review presented by the assessee on grounds other than the matter requiring rectification had occupied the department's attention until after the period of limitation had elapsed.

Case referred by M. L. Darling, Esquire, Commissioner of Income-tax, Lahore, with his letter No. 505-J. M./893-26, dated the 18th May 1926, for orders of the High Court.

1927

JESA RAM

v.

COMMISSIONER
OF INCOME-TAX.*Nemo*, for Petitioner.

JAGAN NATH, AGGARWAL, for Respondent.

The Order of the Court was delivered by :—

JAI LAL J.—This is a reference under section 66 (1) of the Indian Income-tax Act by the Commissioner of Income-tax, Punjab and North-West Frontier Province, and the question on which we are asked to give our opinion is “Whether under the circumstances of the present case there is any legal limitation preventing the Commissioner from passing his order under section 33, dated the 15th December 1925, the result of which is an enhanced demand.” The circumstances referred to are that the assessee was assessed to income-tax on an income of Rs. 23,434, but in calculating the tax the Income-tax Officer applied the rate of $\frac{1}{1}$ in the rupee instead of $\frac{1}{3}$, which was the proper rate of tax on the amount concerned. In his order, however, the Income-tax Officer clearly stated that the amount of tax had to be, and was, calculated at the latter rate. It will thus be observed that there was a mistake of calculation apparent upon the record of the assessment. The assessee, however, was not satisfied with the amount on which he had been assessed and claimed a reduction of Rs. 3,111, alleged to be irrecoverable loans written off during the accounting period. He applied to the Commissioner to refer the matter to this Court or to exercise his powers of review under Section 33 of the Income-tax Act. The learned Commissioner entertained the application for review and finally decided to allow the assessee Rs. 1,905 as irrecoverable loans written off during the accounting period. The total assessable income was accordingly reduced to Rs. 21,529, but the Commissioner calculated income-tax thereon at $\frac{1}{3}$ per

rupee. The result was that the actual amount of income-tax demanded from the assessee exceeded the amount for which a notice of demand had originally been issued by the Income-tax Officer on the 31st of December 1923. The final order of the Commissioner was passed on the 15th of December 1925, the date of the assessee's application to him being the 27th of June 1924.

It appears that the application for reference and review was presented within one year of the date of demand, but the actual rectification of the mistake was made by the Commissioner more than a year after that date. The learned Commissioner is of opinion that no question of limitation arises when he passes an order under section 33 of the Indian Income-tax Act in exercise of his powers of review, and that in the present case, as the review proceedings originated in the assessee's petition of the 27th of June 1924 on which date action could have been initiated by the Income-tax Officer under sections 34 and 35 of the Act the ordinary period of one year provided by those sections did not apply.

After giving our careful consideration to the above opinion and to the arguments advanced before us by Mr. Jagan Nath Aggarwal who appeared for the Commissioner we are of opinion that the question should be answered in the affirmative. Section 33 provides that the Commissioner may call for the record of any proceedings under the Act and after such enquiry as he may consider fit may pass such orders as he thinks fit *but subject to the provisions of the Act*. Now section 35 provides that the Income-tax Officer may at any time within one year from the date of any demand rectify any mistake apparent from the record of the assessment. This power includes the rectifica-

1927

JESA RAM
v.
COMMISSIONER
OF INCOME-TAX.

1927

JESA RAM
v.
COMMISSIONER
OF INCOME-TAX.

tion of a mistake which has the effect of enhancing an assessment. The words "subject to the provisions of this Act" contained in section 33 leave no doubt in our minds that the Commissioner is not entitled to pass an order which he himself or another Income-tax authority is not authorised to pass under the other provisions of the Act. In the absence of an express provision enabling the Commissioner to pass orders prejudicial to an assessee without any limit of time we are of opinion that his powers are subject to the same restrictions as those of an Income-tax Officer under section 35 which clearly provides that an Income-tax Officer is not entitled to rectify a mistake to the prejudice of an assessee after the expiry of one year from the date of the demand.

Even if the case be governed by section 34 which enables an Income-tax Officer to reassess income, profits or gains when they have escaped assessment or have been assessed at too low a rate, the same remarks would apply *mutatis mutandis*, as under that section also the powers must be exercised within one year. We are, therefore, of opinion that the expression "subject to the provisions of this Act" includes the restriction as to limitation imposed on other Income-tax authorities and, consequently, the rectification of the mistake in this case to the prejudice of the assessee after the expiry of one year from the date of the demand made upon the assessee was not authorised by law. To hold otherwise would mean that there is no limit to the Commissioner's power to reopen and alter assessments to the prejudice of an assessee, a position which the Legislature could not have contemplated. The fact that the assessee had moved the Commissioner under section 33 does not, in our opinion, make any difference because the question of rectification was not covered by his petition.

With the above expression of our opinion we return the case to the Commissioner. The assessee was not represented before us, there will, therefore, be no order as to the costs of this reference.

N. F. E.

1927

JESA RAM
v.
COMMISSIONER
OF INCOME-TAX.

REVISIONAL CIVIL.

Before Mr. Justice Addison.

COURT OF WARDS, ESTATE *Sodhi*
RICHPAL SINGH (JUDGMENT-DEBTOR) Petitioner

versus

DEVI DAS (DECREE-HOLDER) Respondent.

1927

Feb. 1.

Civil Revision No 92 of 1927.

*Punjab Court of Wards Act, II of 1903, section 31 (2)—
Sale of Ward's property in execution of decree—without
certificate—ultra vires.*

Where the estate of a judgment-debtor comes under the management of the Court of Wards under sections 9 and 10 of Punjab Act II of 1903, and a decree is outstanding against the Ward at that time, execution of it cannot be proceeded with until the decree-holder files a certificate under section 31 (2), that the claim has been notified in accordance with section 26, and execution proceedings taken in the absence of such a certificate are *ultra vires*.

Application for revision of the order of Sheikh Ali Muhammad, Senior Subordinate Judge, Ferozeshah, dated the 25th August 1926, rejecting the application setting forth objections as being time-barred, etc.

CARDEN-NOAD, for Petitioner.

MULK RAJ, for Respondent.

JUDGMENT.

ADDISON J.—The estate of *Sodhi* Richpal Singh came under the management of the Court of Wards

ADDISON J.