

the parties to obtain leave to appeal to His Majesty in Council. In our opinion the alteration made in this case was in favour of the petitioner and was not of a substantial nature; because in substance we affirmed the decision of the trial Court and there is no question of law involved in the appeal.

We dismiss this application with costs.

A. N. C.

Application dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haidar.
MANOHAR LAL-DEV KARNDAS—Petitioners

versus

THE COMMISSIONER OF INCOME TAX

Respondent.

Civil Miscellaneous No. 180 of 1928.

Indian Income Tax Act, XI of 1922, sections 23 (4) and 34—Assessment under section 23 (4)—whether bars re-assessment under section 34—where income has escaped assessment.

Held, that the fact that the Income Tax Officer has already assessed the assessee under section 23 (4) of the Income Tax Act, does not render his successor incompetent to re-assess them under section 34 of the Act within one year from the original assessment on the ground that income, profits or gains chargeable to income-tax had escaped assessment.

Bulaqi Shah v. Crown (1), and The Commissioner of Income Tax, Madras v. Sundaresa Iyer (2), followed.

Application under section 66 (3) of the Income Tax Act for issue of a mandamus to the Commissioner of Income Tax, for statement of the case.

RAJ KISHAN and HEM RAJ MAHAJAN, for Petitioners.

JAGAN NATH AGGARWAL, for Respondent.

(1) 1 Indian Income Tax Cases 256. (2) 2 Indian Income Tax Cases 173

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The judgment of the Court was delivered by:—

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TEK CHAND J.—This is an application under section 66 (3) of the Indian Income Tax Act filed by Messrs. Manohar Lal-Devkarn Dass, proprietors of a ginning factory at Hansi, District Hissar, praying that the Income Tax Commissioner, Punjab, be required to state the case and to refer it to this Court as certain law points arise in connection with the assessment of the petitioners for the year 1925-26. The points of law which the petitioners require to be stated are mentioned in paragraph 20 (a) to (i) of their petition. Most of these clauses attack the finding of fact arrived at by the Income Tax Officer (and confirmed by the Assistant Commissioner) that the petitioners had deliberately withheld their account books. As this finding was based on evidence produced by the petitioners before the Income Tax Officer, no question of law arises in connection therewith. On this finding the following two questions of law arise:—

(1) Whether in view of the fact that the Income Tax Officer had already assessed the petitioners under section 23 (4) it was competent to his successor to reassess them under section 34 of the Act within one year from the original assessment, on the ground that their income, profits or gains chargeable to income-tax had escaped assessment; and

(2) whether an order under section 23 (4) could be legally passed without hearing the evidence which the assessee wanted to produce with regard to the profit of other factories at Hansi and without receiving their own *kachchi rokar*, in spite of the fact that they had deliberately withheld the account books of their own factory for the period in question.

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The first question has been judicially considered by this Court in *Bulaqi Shah versus Crown* (1), and answered against the assessees. The Madras High Court has also taken the same view in *The Commissioner of Income Tax, Madras v. Sundaresa Iyer* (2). After hearing Mr. Raj Kishan for the petitioners we are in agreement with the rule of law laid down in these rulings. Indeed, the wording of section 34 cannot possibly be open to any other construction. We do not, therefore, consider it necessary to require the Commissioner of Income Tax to state the case on this point.

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On the second point, in view of the finding of fact that at the time of the original assessment the petitioners failed to produce their account books, and when notice was issued to them under section 34 they came forward with a story that their *pakki rokar* and other necessary books had been lost in the train when the manager of their factory was travelling from Hansi to Jind, which story has been found to be wholly false, we think that the Income Tax Officer was justified in refusing to allow the petitioners to produce the evidence of the profits of the other factories or to receive the *kachchi rokar* of the petitioners which would obviously be of no value in the absence of the *pakki rokar* and the ledgers.

This being our view of the two questions of law which arise in the case, we do not think it necessary to give a decision on the preliminary question raised by Mr. Jagan Nath Aggarwal for the respondent that this petition under section 66 (3) was incompetent. Having regard to all the circumstances of the case we leave the parties to bear their own costs in this Court.

A. N. C.

Petition dismissed.

(1) 1 Indian Income Tax Cases 256. (2) 2 Indian Income Tax Cases 173.