

CIVIL REFERENCE.

Before Broadway and Johnstone JJ.

KARAM CHAND (ASSESSEE) Petitioner

versus

THE COMMISSIONER OF INCOME TAX—
Respondent.

Civil reference No. 29 of 1930.

Indian Income Tax Act, XI of 1922, section 25 (a) and 30 (1)—Appeal—plea not raised before Income Tax Officer—whether entertainable in appeal to the Assistant Commissioner.

The petitioner, after being assessed for 1927-28 as the head of his joint Hindu Family, raised for the first time before the Assistant Commissioner on appeal, the plea that the joint family had been dissolved owing to the fact that a suit for partition had been instituted in 1926-27. This suit it appears was then pending and the property of the joint family had not been partitioned.

Held, that the objection ought to have been taken by him before the Income Tax Officer under section 25-A of the Income Tax Act, whereupon it would have been incumbent on the Income Tax Officer to make such enquiry as he thought fit and to pass an order under that section if he found that its requirements had been fulfilled; and the petitioner could then have appealed against that order, if he wished, under the provisions of section 30 (1);

But that, to call upon the Assistant Commissioner on appeal to go into the question which should have been raised before, and decided by, the Income Tax Officer, was opposed to the clear provisions of section 30 (1), which barred the Assistant Commissioner from entertaining the plea.

Case referred by Mr. W. R. Pearce, Commissioner of Income Tax, Punjab, N.-W. F. and Delhi Provinces, with his letter No. R. 14-(i)-9, dated the 2nd September 1930, for orders of the High Court.

ACHERU RAM, for BADRI DAS, for Petitioner.

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R. C. SONI, for JAGAN NATH AGGARWAL, for Respondent.

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BROADWAY J.—This is a reference by the Commissioner of Income Tax, Punjab, North-West Frontier and Delhi Provinces, under section 66 (2) of the Income Tax Act, XI of 1922. It has been made in the following circumstances :—

There was a Joint Hindu family in the Peshawar city which carries on the work of bankers and owns certain house property. The head of this family was *Rai Bahadur* Karam Chand who has brothers and nephews. A notice was issued to *Rai Bahadur* Karam Chand as head of the family under section 22 (2) of the Income Tax Act calling upon him to make a return of his income during the accounting period of 1927-28. He complied with the notice and all subsequent notices and was assessed on a taxable income of Rs. 1,41,057. Against this assessment he preferred an appeal to the Assistant Commissioner and one of the grounds raised before that officer was that the joint family had been dissolved owing to the fact that a suit for partition had been instituted in 1926-27. This suit it appears was then pending and the property of the joint family had not been partitioned. The Assistant Commissioner in dealing with the appeal held that inasmuch as this particular objection had not been raised before the Income Tax Officer, it could not be raised before him in appeal and that therefore he could not decide it. *Rai Bahadur* Karam Chand then moved the Commissioner of Income Tax making a joint application under sections 33 and 66 (2) of the Income Tax Act. The Income Tax Commissioner declined to act under

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section 33 but referred the following questions to this Court :—

(1) Whether the fact that at the time of making the assessment for the year 1928-29 the question regarding the dissolution of the joint family was not raised before the Income Tax Officer debarred the petitioner from raising the point in appeal.

(2) Whether the Assistant Commissioner could refuse to adjudicate on the law point raised in the appeal in respect to the claim of partition of the Hindu undivided family.

(3) Whether there was any legal bar to the Assistant Commissioner entertaining the plea and giving his finding on it.

After making this reference the Income Tax Commissioner has as required by law recorded his opinion on the questions referred and has answered the questions against the petitioner. The objection which the petitioner made in his appeal to the Assistant Commissioner ought to have been taken by him before the Income Tax Officer under section 25-A of the Income Tax Act. Had such an objection been taken, it would have been incumbent on the Income Tax Officer to make such enquiry as he thought fit and to pass an order under that section if he found that the requirements of that section had been fulfilled. If the petitioner found himself dissatisfied with the order passed by the Income Tax Officer he could prefer an appeal against that order under the provisions of section 30 (1) of the Act. What the petitioner claims to be entitled to do is to call upon the Assistant Commissioner in an appeal to him to go into a question which should have been raised before, and decided by, the

Income Tax Officer, on an appeal against the assessment. This appears to me to be opposed to the clear and unmistakable provisions of section 30 itself. I consider that the opinion of the Income Tax Commissioner is correct and that he has rightly held that the petitioner could not appeal to the Assistant Commissioner on the ground set out by him, inasmuch as no objection under section 25-A had been made, and that the Assistant Commissioner was right in refusing to go into the matter and further, in my opinion, the provisions of section 30 (1) barred the Assistant Commissioner from entertaining the plea. The petitioner must pay the costs of this Court.

JOHNSTONE J.—I agree.

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