

It is clear from the authorities quoted above that the money in the hands of the Collector is money belonging to the Government until tender is made to defendants Nos. 3 and 4, and that no relationship of creditor and debtor can be said to have been established between the Collector on the one side and the owners of the land on the other. In these circumstances Section 60 of the Code of the Civil Procedure has no applicability.

For the reasons given above, we affirm the decision of the learned District Judge and dismiss this appeal. Having regard to all the circumstances we order that the parties will bear their own costs in this Court.

Appeal dismissed.

A. N. K.

MISCELLANEOUS CIVIL.

Before Addison and Din Mohammad JJ.

TULSI DAS-NAGIN CHAND (ASSEESSEES)	} Petitioners,	1938
	<i>versus</i>	
THE COMMISSIONER OF INCOME-TAX	} Respondent.	

Civil Miscellaneous No. 654 of 1937.

Indian Income-tax Act (XI of 1922), SS. 22 (4), 23 (4) -- Notice under S. 22 (4) -- Partial compliance therewith -- Assessment under S. 23 (4) -- Legality of -- Arbiter of the relevancy of materials to be produced in support of return -- who is.

The assessee submitted the return for 1932-33, and was duly assessed thereon. In the course of assessment for the year 1933-34 it transpired that the assessee's income for 1932-33 had escaped assessment and therefore notice was issued to him under s. 34 and he submitted a fresh return which however was found to be incomplete. The assessee complied only partially with a notice issued to him under s. 22 (4) inasmuch as a large number of books dealing with the old accounts of certain concerns belonging to the assessee were

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withheld. The Income-tax Officer made an assessment under s. 23 (4) to the best of his judgment but in arriving at his figures he referred to the account books which had been produced by the assessee and utilized certain materials appearing in those books in arriving at his conclusion. It was contended by the assessee (i) that there had been no non-compliance with the terms of the notice under s. 22 (4) as the books which were not produced were irrelevant to the enquiry since the Income-tax Officer was in a position to make the assessment on information furnished by the books produced before him; (ii) that the assessment for the next year was based on the same material in the account books which were before the Income-tax Officer and the Income-tax authorities were not legally competent to assess the petitioner under s. 23 (4) of the Act.

Held, (i) that the final arbiter of what is required is the Income-tax Officer and not the assessee and in case of non-compliance with any of the terms of notice under s. 22 (4), the assessee makes himself liable to be assessed under the provisions of s. 23 (4) of the Act;

(ii) that what happens in a subsequent year cannot be taken to be a criterion for what should have happened in the previous year and the assessment cannot be set aside merely on the ground that in any subsequent year the Income-tax Officer himself or his successor did what he refused to do previously.

Ramaswami Chettiar v. Commissioner of Income-tax, Madras (1), relied upon.

Ganga Sagar v. Commissioner of Income-tax, U. P. (2), distinguished.

Petition under section 66 (3) of the Indian Income-Tax Act, praying that the Commissioner of Income-tax may be asked to state and refer the petitioners' case with his opinion thereon for decision of questions of law formulated in the petition.

KIRPA RAM, BAJAJ, for Petitioners.

JAGAN NATH, AGGARWAL, and S. M. SIKRI, for Respondent.

The order of the Court was delivered by—

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DIN MOHAMMAD J.—This is a petition under sub-section (3) of section 66 of the Income Tax Act praying for the issue of a mandamus to the Commissioner to state the case of the petitioner and to refer it to this Court. Originally eleven questions were formulated in the petition but the petitioner's counsel has now confined himself to the two questions stated below :—

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(1) Whether there has been any non-compliance with the terms of the notice issued to the petitioner under sub-section (4) of section 22; and

(2) Whether in view of the fact that the assessment for the next year was based on the same material in the account books which were produced before the Income Tax Officer, the Income Tax Officer and the Assistant Commissioner were legally competent to assess the petitioner under sub-section (4) of section 23.

The facts giving rise to the two questions propounded above are as follows. The assessee, hereinafter referred to as an individual, is a Hindu undivided family trading in hardware at Ludhiana and in the neighbouring States. He submitted the usual return for 1932-33 on which he was duly assessed on the 2nd November 1932. In the course of assessment proceedings for the year 1933-34 it transpired that the assessee's income for 1932-33 had escaped assessment and that it had further been assessed at a low rate. The Income Tax Officer, who was then dealing with the case, thereupon issued a notice under section 34 and called upon the assessee to submit a fresh return in relation to the assessable income. The assessee submitted a return but it was found to be incomplete. Thereupon, a notice under sub-section (4) of section

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22 was served on the assessee requiring him to produce all the account books relating to the various concerns in which the assessee was interested. With this notice only a partial compliance was made inasmuch as a large number of books dealing with the old accounts of certain concerns belonging to the assessee were withheld. Consequently the Income Tax Officer made an assessment to the best of his judgment under sub-section (4) of section 23, but in order to arrive at the figure on which the assessment should be made, he referred to the account books which had been produced by the assessee and utilised certain materials appearing in those account books in arriving at his conclusion. The assessee made an application under Section 27 but the application was rejected by the Income Tax Officer on the 14th February 1936, and an appeal against that order also failed. On a petition being made under sub-section (2) of section 66, the Commissioner came to the conclusion that no issue of law arose and consequently dismissed the petition.

The main contention of the assessee is that most of the books which were not produced were irrelevant to the enquiry and that even their absence had not been felt by the Income Tax Officer inasmuch as he was in a position to make the assessment on information furnished by the account books which were actually produced and that consequently it could not be said that there was any non-compliance with the terms of the notice issued under sub-section (4) of section 22. In support of his contention he has relied on *Ganga Sagar v. Commissioner of Income-tax, U. P.* (1), but neither does the contention raised by the assessee appear to us to be sound nor does the authority relied on by him advance his case any further.

Sub-section (4) of section 22 empowers the Income Tax Officer to serve on any person contemplated by the sub-section a notice requiring him to produce such accounts or documents as *the Income Tax Officer may require*. Sub-section (4) of section 23 enacts that if any person *fails to comply with all the terms of a notice issued under sub-section (4) of section 22*, the Income Tax Officer shall make the assessment to the best of his judgment. Reading these two provisions of law together the only conclusion that can reasonably be deduced is that it is the requirement of the Income Tax Officer which is to be satisfied by the assessee under sub-section (4) of section 22 and not what the assessee thinks the Income Tax Officer, should, in the circumstances of the case, have required. In other words, the final arbiter of what is required is the Income Tax Officer and not the assessee. If, therefore, there is any non-compliance with any of the terms of the notice issued under sub-section (4) of section 22, the assessee makes himself liable to be assessed under sub-section (4) of section 23. To put any other construction on the clear wording of the Statute as contained in sub-section (4) of section 22 or sub-section (4) of section 23 would amount to substituting the assessee for the income tax authorities to determine what materials are necessary to be produced in order to enable the Income Tax Officer to arrive at a just estimate of an assessee's income. This could never have been the intention of the Legislature while enacting these provisions.

In *Ganga Sagar v. Commissioner of Income Tax*, U. P. (1), the Income Tax Officer had based his assessment on the actual entries in the books produced by the assessee and had come to the conclusion that there

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was no extra income on which the assessee should have been assessed or that such income could have been discovered by the production of those books which had not been produced. Here, however, the circumstances are quite different, and the Income Tax Officer has repeatedly observed that the profits have been concealed and that the non-production of some of the books required by him is deliberate. That case, therefore, is distinguishable on the grounds stated above. It may be that, as remarked by the learned Judges in that case, "the word 'require' really means require as a piece of relevant evidence" and that it does not mean "that the Income Tax Officer should ask for documents or account books which he does not think to be relevant at all"; but, as observed in the same judgment, an Income Tax Officer is entitled to call for documents which *in his opinion* would furnish him with relevant material for assessment of tax. It is a well-established rule of law that the income tax authorities are the sole arbiters of facts and that the conclusions reached by them on questions of fact are not liable to be disturbed by any outside authority. It would, therefore, be entirely for the income tax authorities to determine what evidence they consider relevant for the purposes of their enquiry and to contend that a certain piece of evidence which they considered to be relevant was not relevant at all to the matter at issue would be in a way to encroach upon their domain.

Similarly, if an Income Tax Officer, after calling for the previous accounts relating to the various businesses conducted by the assessee, utilizes the accounts produced by the assessee in making his estimate, it cannot be argued that those accounts which were not produced by the assessee were not required for the

purpose of the assessment. An Income Tax Officer may refer to the accounts produced in order to arrive at an estimate of the assessable income or he may look into the accounts in order to justify his conclusion as to the falsity of the accounts submitted by the assessee; but, in our view, it is going too far to say that, if an Income Tax Officer utilizes any account books in arriving at his estimate, those were the only relevant accounts which were necessary for his purpose and that he was not justified in asking for any other account books. The withholding of some of the account books which the assessee in this case had been called upon to produce amounted, therefore, to a non-compliance with the terms of the notice issued under sub-section (4) of section 22 and entailed all the penalties laid down in sub-section (4) of section 23. In support of this conclusion reference may be made to *Ramaswami Chettiar v. Commissioner of Income Tax, Madras* (1).

The second question can be disposed of on the short ground that what happens in a subsequent year cannot be taken to be a criterion for what should have happened in the previous year, and that if an order made by the Income Tax Officer, is not open to objection on any legal ground, it cannot be set aside merely on the ground that in any subsequent year he himself, or his successor, did what he refused to do previously.

We, accordingly, answer both questions suggested by the assessee in the affirmative and dismiss this petition. The Commissioner will get his counsel's fee from the assessee which we estimate at Rs. 50.

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Petition dismissed.

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