

CIVIL REFERENCE.

Before Addison Acting C. J. and Din Mohammad J.

VIR BHAN-BANSI LAL (ASSEESSE) Petitioners,

versus

THE COMMISSIONER OF INCOME-TAX,

PUNJAB—Respondent.

1938

July 7.

Civil Reference No. 8 of 1938.

Indian Income-tax Act (XI of 1922), S. 28 (1) — Penalty, imposition of — whether competent — After the assessment order and the payment of tax — Expression “ payable by him ” in sub-s. (1) of S. 28 — meaning of.

Held, that once the Income-tax Officer starts proceedings under sub-s. (1) of s. 28 within the time prescribed therein, he is empowered to make an order imposing a penalty under that sub-section even after the assessment order has been finally made and the tax has been paid.

That the words “ payable by him ” in s. 28 (1) can be taken to mean “ to which he has been assessed ” whether the amount has been paid or not and, taken in that light, it cannot be urged that the order contemplated by sub-s. (1) cannot be made after the assessment order has been made and the tax has been paid.

Case referred under Section 66 (3) of the Indian Income-tax, by Mr. K. C. Basak, Commissioner of Income-tax, Punjab, North-Western Frontier and Delhi Provinces, Lahore, with his No.S.30/AR-36 of 25th April, 1938, for orders of the High Court.

C. L. AGGARWAL, for Petitioners.

JAGAN NATH AGGARWAL, for Respondent.

The order of the Court was delivered by—

DIN MOHAMMAD J.—This is a case stated by the Commissioner on the following question formulated by

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this Court under sub-section (3) of section 66 of the Indian Income-tax Act, 1922 :—

“ Whether, although notice issued under section 28 of the Act a day before the assessment order was made by the Income-tax Officer, that officer had power on a date subsequent to the date of the assessment order to impose a penalty under section 28.”

The Commissioner contends that if once the Income-tax Officer starts proceedings under sub-section (1) of section 28 within the time prescribed there, he is empowered to make an order imposing a penalty under that sub-section, even after the assessment order has been finally made and the tax been paid. On behalf of the assessee on the other hand it is urged that the Income-tax Officer becomes *functus officio* after making the assessment order and that inasmuch as he is required to be satisfied and make his direction in the course of any proceedings under the Act, he can only impose a penalty at the time when he makes the assessment and not at any subsequent period, especially after the tax as assessed has already been paid.

Unfortunately sub-section (1) of section 28 is not happily worded and it is on account of want of clearness and precision in the language employed there that this dispute has arisen. That sub-section runs as follows :—

“ If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way

of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income."

As regards the limit of time when the income-tax authorities are to be satisfied that any concealment has taken place or any particulars have been deliberately furnished inaccurate, there appears to be no ambiguity and consequently no dispute. It is common ground that this satisfaction must take place in the course of any proceedings relating to the assessee, whatever the nature of those proceedings may be. The difficulty arises only in the matter of determining the point of time when the direction as contemplated by that sub-section is to be given. The assessee draws our attention particularly to the word "payable" as used in the sub-section and urges that by the use of this term the Legislature intended to restrict the exercise of the power conferred by this sub-section to the period when the liability of an assessee was determined and before the tax was paid and consequently this power cannot be exercised at a time when the tax has already been paid. The language as used in this section may be susceptible of this interpretation but it cannot be denied that the interpretation sought to be put upon it by the Commissioner is not impossible. Considering that the former interpretation may lead to absurd results and that the latter is more in consonance with reason we have no hesitation in adopting the interpretation suggested by the Commissioner. There is no magic in the word "payable." It is true that it has been frequently used in the Act to denote 'liability to assessment,' but had the word "paid" been used here as suggested by the assessee, it might have led to

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many complications in the matter of imposing penalties under sub-section (1). In our view, the words "payable by him" without any unnecessary straining of language can be taken to mean "to which he has been assessed" whether the amount has been paid or not, and taken in that light it cannot be urged that the order contemplated by sub-section (1) cannot be made after the assessment order has been made, and the tax has been paid. We see no justification for holding that the order should either be contemporaneous or simultaneous with the order of assessment. Neither is it intended to delay the assessment proceedings in order to enable the Income-tax Officer to make up his mind as to the imposition of penalty nor is the order of imposition to be accelerated merely to synchronise it with the assessment order. To insist on the order of penalty being simultaneous with the order of assessment is to ask for a physical impossibility: one is bound to precede or follow the other and if once it is conceded that the order of penalty may be made after the order of assessment has been made, there is nothing in the Act which would tend to restrict that period in any manner.

There is no direct authority in support of our view but we consider that the construction proposed by us to be put upon the sub-section is the only reasonable construction that can be put both in the interests of the department and of the assessee. The department will not be compelled to delay the assessment proceedings with a view to determine whether to prosecute an assessee under section 52 or to impose a penalty on him under sub-section (1) of section 28 or to do neither and the assessee will not run the risk of being victimised by any rash or hasty order.

We accordingly answer the question propounded above in the affirmative. We, however, in the circumstances of the case, leave the parties to bear their own costs.

We further draw the attention of the Commissioner to the desirability of approaching the Central Legislature with a view to remove the ambiguity that exists in the language of section 28 as the matter of amending the Income-tax Act is already on the *tapis*.

A. N. K.

APPELLATE CRIMINAL.

Before Blacker and Ram Lall JJ.

RAHMAN AND OTHERS—Appellants,

versus

THE CROWN—Respondent.

Criminal Appeal No. 256 of 1938.

Indian Penal Code (Act XLV of 1860), SS. 149, 300, 302, 326 — Unlawful assembly — Liability of each member thereof — Intention to cause death or knowledge that death would result whether necessary under S. 300 Cl. 3 — Death as the result of cumulative effect of multiple injuries — though not one of the injuries individually fatal — Offence — Sentence — Vicarious liability under S. 149 — Intention to cause actual result achieved not clearly established.

Held, that once an assembly has become unlawful, then all things done in the prosecution of the common unlawful object of that assembly are chargeable against every member thereof. The liability of every member extends not only to the acts intended by all to be done, but also to those offences which are likely to be committed in achieving the common object.

That where, as in the circumstances of this case, the unlawful object was to cause grievous hurt with lethal weapons, the death was the likely result of the beating the accused intended to administer. And therefore when a number of

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