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THE CROWN
v.
AMAR SINGH.

Code, we set aside the order of the Sessions Judge, acquitting Amar Singh, and sentence him to eighteen months' rigorous imprisonment from to-day.

A. N. K.

Appeal accepted.

CIVIL REFERENCE.

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

1938

June 27.

MUBARAK ALI—Petitioner,

versus

THE COMMISSIONER OF INCOME-TAX, LAHORE—Respondent.

Civil Reference No. 7 of 1938.

Indian Income-tax Act (XI of 1922), SS. 23 (4), 34 — Income escaping assessment — assessment on the estimate arrived at by Income-tax Officer — His best judgment — Material before him — what is.

The assessee in his return for 1934-35 showed his sales at Rs.12,000 odd. The Income-tax Officer did not challenge the figures, but enhanced the rate of profit. The assessee's appeal from that order failed. In the subsequent year's assessment the Income-tax Officer was of opinion that the assessee's accounts were not reliable and it came to light that he had invested large sums on immoveable property in the previous years and those investments could not be explained in the face of the returns submitted by him since the years 1931-32. The Income-tax Officer accordingly issued a notice to the assessee under s. 34 for the year 1934-35 and eventually raised the figure of sales to Rs.40,000. It was contended on behalf of the assessee that the estimate arrived at by the Income-tax authorities was not based on any material or evidence.

Held, (repelling the contention) that it cannot be said that the estimate arrived at by the Income-tax Officer was not based on any material inasmuch as he took into consideration not only recent acquisitions, but also the fact that Income-tax

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returns since 1931-32 were not genuine. He was competent to take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of previous returns by and assessment of, the assessee and all other matters which in his opinion would assist him in arriving at a fair and proper estimate.

Commissioner of Income-tax, Central Provinces v. *Badridas Ramrai Shop, Akola* (1), followed.

U. Lu. Nyo v. *Commissioner of Income-tax, Burma* (2), distinguished.

Held, that, in the circumstances of the case, a part of the income, profits and gains from the sale of books in the accounting year 1933-34 had escaped assessment within the meaning of s. 34 at the time of the original assessment for the year 1934-35.

Williams v. *Grundy* (3), referred to.

Commissioner of Income-tax, Bombay Presidency and Aden v. *Khemchand Ramdas* (4), relied upon.

In re Mahaliram Ramjeedas (5), distinguished.

Case referred under Section 66 (3) of the Indian Income-tax Act, by Mr. K. C. Basak, Commissioner of Income-tax, Punjab, North-Western Frontier and Delhi Provinces, with his letter No.S.12/L.R-36, dated 25th April, 1938, for orders of the High Court.

KIRPA RAM, for Petitioner.

JAGAN NATH AGGARWAL, for Respondent.

The order of the Court was delivered by—

DIN MOHAMMAD J.—On an application made by the assessee, we issued a mandamus to the Commissioner requiring him to state the case on the following two questions :—

(1) Whether there was any material or evidence for the enhancement under section 34 by increasing sales from Rs.12,700 to Rs.40,000? and

(1) I. L. R. [1937] Nag. 191 (P. C.).
(2) (1933) 7 I. T. C. 47.
(3) (1934) 2 I. T. R. 236.
(4) 1938 A. I. R. (P. C.), 175.
(5) (1938) 6 I. T. R. 265.

(2) Whether, in the circumstances of the case, a part of the income, profits and gains from the sale of books in the accounting year 1933-34 can be said to have escaped assessment within the meaning of section 34 at the time of the original assessment for the year 1934-35?

The material facts are these. The assessee is a bookseller and also owns some immoveable property. In the return submitted by him for 1934-35, he showed his sales at Rs.12,699 and charging profit at the rate of 10 per cent. he returned his total income assessable to income-tax from the sale of books at Rs.1,300. To this he added Rs.546 as rent from house property and debited the total amount with an expenditure of Rs.2,175 thus claiming a loss of Rs.329. The Income-tax Officer did not challenge the figure of sales but enhanced the rate of profit to 24 per cent. The assessee took an appeal from that order but it was dismissed.

In connection with the 1935-36 assessment, the Income-tax Officer scrutinized the assessee's accounts more carefully and came to the conclusion that the accounts could not be depended upon. It transpired that the assessee had purchased immoveable property worth Rs.8,000 in his own name on the 19th November, 1932; again on the 1st April, 1933, he had purchased immoveable property worth Rs.21,000 in the name of his wife and had further spent Rs.4,000 in renovating his business premises. It was obvious that these acquisitions could not be properly explained in face of the returns previously submitted by the assessee, inasmuch as in 1931-32 he had made a return of Rs.900 only, in 1932-33 of Rs.1,031 only and in 1933-34 of Rs.237 only. The Income-tax Officer accordingly issued a notice to the assessee under section

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34 and eventually raised the figure of sales to Rs.40,000. in which he was supported both by the Assistant Commissioner of Income-tax and the Commissioner.

The question is whether the estimate now arrived at by the Income-tax Authorities is based on any material. The leading authority on the subject as to what constitutes ' material ' in such cases is the latest pronouncement of their Lordships of the Privy Council, reported as *Commissioner of Income-tax, Central Provinces* v. *Badridas Ramrai Shop, Akola* (1). Lord Russell of Killowen who delivered the judgment of their Lordships observed at pages 201 and 202 :—

" The Officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate : and though there must necessarily be guess-work in the matter, it must be honest guess-work. In that sense too the assessment must be to some extent arbitrary. Their Lordships think that the section places the officer in the position of a person whose decision as to amount is final and subject to no appeal;

(1) I. L. R. [1937] Nag. 191, 201, 202 (P. C.).

but whose decision if it can be shown to have been arrived at without an honest exercise of judgment, may be revised or reviewed by the Commissioner under the powers conferred upon that official by section 33."

In the present case the Income-tax Authorities not only took into consideration the recent acquisitions made by the assessee but also the fact that since 1931-32 none of his returns was ever held to be genuine. In 1931-32, his estimate of Rs.900 was raised to Rs.3,092, in 1932-33, from Rs.1,031 the estimate was raised to Rs.3,751 and in 1933-34, his estimate of Rs.237 was raised to Rs.2,110. In the circumstances explained above, we are not in a position to say that the Income-tax Officer who formed the original estimate had no material or had acted "dishonestly or vindictively or capriciously" or that he did not "honestly believe the estimate arrived at by him to be a fair estimate of the proper figure of assessment." If the assessee considers that the estimate is far in excess of the actual income earned by him, the remedy lies in his own hands. He should try to be honest in his dealings with the Income-tax Authorities and keep accurate accounts of all the business done by him and if the Income-tax Authorities are satisfied that his accounts are reliable, we are sure that they will never resort to the 'best judgment' assessment in future. Counsel for the assessee relies on *U. Lu. Nyo* v. *Commissioner of Income-tax, Burma* (1) in support of his contention that when once an estimate has been made, no second estimate can be made under section 34, but even if the observations made in that case were correct, they do not govern the present case, as it proceeds on different facts. We accordingly answer question No.1 in the affirmative.

(1) (1933) 7 I. T. C. 47.

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Question No. 2 need not detain us long. This matter is again concluded by authority. In a recent judgment reported as *Commissioner of Income-tax, Bombay Presidency and Aden* v. *Khem Chand Ramdas* (1). Their Lordships of the Privy Council have held :—

"When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in section 34 and section 35 of the Act and within the time limited by those sections."

This evidently implies that even the 'best judgment' assessment can be reopened under section 34. As to the circumstances in which a second assessment can be made, although the first assessment had become final, reference may be made to *Williams* v. *Grundy* (2). It is true that the language of section 125 of the English Act is different but the governing principle is the same. In that case the Inspector of Taxes had accepted the contention of the assessee and made no assessment in respect of a certain item of income and some time later he re-considered the facts and came to the conclusion that the income was taxable. Finlay J. held that the income could be taxed and that the act of the Inspector was not open to any legal objection.

Counsel for the assessee has drawn our attention to *In re Mahaliram Ramjeedas* (3), where it has been held that in deciding whether income had escaped assessment, an Income-tax Officer must not act on suspicion or conjecture and must decide the question upon a fair and reasonable consideration of such information and materials as are available to him.

(1) 1938 A. I. R. (P. C.) 175 (2) (1934) 2 I. T. R. 236.
(3) (1938) 6 I. T. R. 265.

This judgment, however, does not help the assessee in the least, inasmuch as no principles laid down there have been violated in this case. On the grounds stated above we answer this question too in the affirmative.

In the circumstances of the case, however, we leave the parties to bear their own costs before us.

A. N. K.

REVISIONAL CRIMINAL.

Before Din Mohammad J.

ISLAM-UD-DIN *alias* ISLAMAN—Petitioner,

versus

THE CROWN—Respondent.

1938

Nov. 2.

Criminal Revision No. 1355 of 1938.

Criminal Procedure Code (Act V of 1898), SS. 110 and 118 — Security for good behaviour from habitual offenders — necessary requirements before order can be passed.

Held, that an order under s. 110 read with s. 118 of the Code of Criminal Procedure cannot be made on vague allegations. Unless a man is proved by habit a robber, housebreaker, thief or forger or by habit a receiver of stolen property, etc., this drastic measure cannot be taken against him.

And if, in a case like the present, the prosecution witnesses themselves admit that in all cases in which the person proceeded against was sent up, he was either discharged or acquitted, it cannot be urged that the requirements of s. 110 are satisfied.

Kundan v. *The Crown* (1) and *Kehr Singh* v. *The Crown* (2) followed.

Sohan Singh v. *Emperor* (3) and *Jogendra Kumar Nag* v. *Emperor* (4), relied upon.

(1) I. L. R. (1928) 9 Lah. 133.
(2) I. L. R. (1928) 9 Lah. 586.
(3) 1926 A. I. R. (Lah.) 45.
(4) (1920) 57 I. C. 940.