

(1942) 01 AHC CK 0005

Allahabad High Court

Case No: None

RADHEY LAL BALMUKAND IN RE.

Vs

APPELLANT

RESPONDENT

Date of Decision: Jan. 17, 1942

Citation: (1942) 10 ITR 131

Final Decision: Disposed Of

Judgement

The only question which we have to decide in this reference u/s 66 (3) of the Income Tax Act is as follows :

"Whether is was not obligatory upon the Income Tax Officer to strike off unnecessary portions out of four capacities in which an assessee could be assessed to clearly indicate in which capacity the assessee was required to submit the return. If so, whether the notice u/s 22 (2) of the Act [with was enclosed with the petition u/s 66 (2)] issued by the Income Tax Officer without indication it, and the assessment following it, were wholly void ?

The notice which is issued u/s 22 (2) of the Act requires the person to whom it is addressed "to prepare a true and correct statement of your/your firms/the familys/the associations total income during the previous year....." The contention on behalf of the assessee is that it is the duty of the Income Tax Officer to score out of the four capacitites as do not apply as to the potential assessee to whom the notice is sent. Dr. Katuju on behalf if the assessee cibteds that having regard to the provision of Section 3 of the Act this duty lies upon the Income Tax authorities. Section 3 enacts that tax shall be charged on "every individual, and Hindu undivided family, company, firm and other association of individuals"s and Dr. Katjus contention is that there is an obligation on the Income Tax authorities to indicate in what capacity it is proposed to charge the potential assessee that tax.

In our opinion there is no force in this plea and we agree with the view which has been expressed by the Commissioner of Income Tax. As has been pointed out by

him, a form 8s prescribed by statute for the return of Income Tax, but there is no statutory form for the notice which is issued u/s 22 (2) and there is nothing whatsoever in the Act to support the contention which has been advanced before us on behalf of the assessee. The notice u/s 22 (2) is the very step which is taken by the Income Tax authorities and it is obvious that at this initial stage the Income Tax Officer may be in no position to know whether the potential assessee is to be taxed as an individual or a Hindu undivided family or firm ect., whereas the person who receives notice has obviously precise information for this very matter. This very point was considered this Bench in [GOPALDAS PARSHOTTAMDAS Vs. COMMISSIONER OF Income Tax, C. P. and U. P.,](#) and the decision at which we arrived was that it was the duty of the person receiving the notice to score out the irrelevant capacities in the notice.

Moreover, in this particular case, the notice was addressed to "Messrs. Radhey Lal Balmukand, Kinari Bazar, Agra, " which clearly shows that it was being addressed to a firm. There is no force in the contention which has been advanced on behalf of the assessee and we accordingly answer this question in the affirmative.

The other question-that is to say question No. 1 is, as conceded by the Commissioner of Income Tax, concluded by a decision of this Court in tow case Kajorimal Kalyanmal (1930) A. I. R. All. 209: 3 I. T. C. 451., and [RAJMANI DEVI Vs. COMMISSIONER OF INCOME TAX, U.P.](#) . Our answer to this question is accordingly in the affirmative.

The assessee will pay the costs of the Advocate-General, whose fee we assessee at Rs. 100. A copy of this order will be sent under the seal of the Court and the signature of the Registrar to the Commissioner of Income Tax.

Reference answered in affirmative.