(1928) 01 AHC CK 0009

Allahabad High Court

Case No: None

In Re: Chandra Sen Jaini Vaid — APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 4, 1928

Citation: AIR 1928 All 283 : (1928) ILR (All) 589 : 108 Ind. Cas. 234

Hon'ble Judges: Walsh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Walsh, J.

This is a case stated by the Income Tax Commissioner. The assessee one Lala Chandra Sen Jaini, a vaid or physician of Etawah, filed a return of his income for the current year stating that he kept no accounts and that his return was an estimate. The Income Tax Officer, presumably having reason to think that the assessee was not giving that attention to his return which, we hope, he gives to his patients served a double notice upon him: one u/s 22 (4), requiring him to produce accounts and documents in support of his return, and another u/s 23 (2), requiring him either to attend or to produce evidence in support of his return. The notice issued is headed "Form B." It is a double form calling upon the assessee to do two things: to produce documents to enable the correctness of the return to be tested; and to attend and give any evidence the assessee may desire to give.

2. This double form which is a useful, and practical way of combining two stages into one, is headed "Form B." We have been unable to ascertain, either from the manual in use in these provinces, or from the gentlemen who have argued the case before us, whether it is a statutory form or merely a form with no greater authority than that of the department from which it issues. But it is not without significance that one of its subtitles is in the following terms: "For use where a return has been made." The question whether a double form like this, and the practice of combining two stages into one is strictly lawful, is not before us. It certainly ought to be. It must

be a great saving of time to an assessee, especially if he is honest and wants to be truly assessed and to pay the proper proportion of his contribution to public funds, and it must also be of great advantage to the taxing authorities to have one comprehensive and final stage of enquiry where an assessee, whose return has been challenged, can produce all his documents in support of his return and give any evidence on which he relies. The assessee complied with the notice which required him to attend u/s 23, presumably because he was advised that if he did not he would have the very assessment made against him of which he complains, but he did not comply with the part of the notice requiring him to produce his documents, apparently relying upon an authority of the Patna High Court, which, he was advised, would enable him to withhold them from the taxing authorities. But the result of his attendance to give evidence was to show that his statement in his original return was a falsehood. He had said that he kept no accounts. He did. When he was put upon oath, he admitted that he kept a register with the names of his customers and the amounts realized. He made the feeble, and obviously dishonest excuse that he had not produced the register because the accounts were not clearly entered. It is to be observed that he was not called upon to produce accounts which were clearly entered, or anything which he might, as the sole judge of the matter consider worthy of being produced, but he was called upon to produce such accounts and documents as he had, and it being immaterial whether the accounts were clear or not or whether they were what is considered regular and perfectly kept accounts, he finally said that he did not wish to produce them. He was thereupon assessed by the Income Tax Officer to the best of his judgment u/s 23 (4). The question is whether the Income Tax Officer had jurisdiction to do that. It seems to us that if he had not, the careful provisions of Sections 22 and 23. for the purpose of preventing fraud and concealment, would be useless and that the machinery provided for the purpose of making people pay their real quota would break down. The machinery provided by these sections for extracting a reasonable contribution out of assessees in default is aimed precisely at the conduct of which this assessee has been guilty, but we have to see whether his dishonest attempts to evade his liability are protected by the law. The sub-section in question is 23 (4).

If the principal officer of any company or any other person fails to make a return under Sub-section (1) or Sub-section (2) of Section 22, as the case may be, or fails to comply with all the terms of a notice issued under Sub-section 4 of the game section or, having made a return, fails to comply with all the terms of a notice issued under Sub-section (2) of this section, the Income Tax Officer shall make the assessment to the best of his judgment.

3. That sub-section contemplates three contingencies. The first, the failure to make a return at all. The second, the failure to comply with a notice requiring production of accounts or documents required by the Income Tax Officer, and the third, the failure to attend at the Income Tax Officer''s office or to produce evidence on which the assessee relies. In each of these three cases the assessee is a person in default and

he can only become in default by a deliberate breach of an express provision to which the penal section which we have just cited in each case refers. It must be admitted that the assessee in this case failed to comply with the terms of the notice issued under Sub-section (4) of Section 22, because he failed to produce this register which was the important document which he had. By a curiously tortuous form of argument it is suggested that this default on his part, does not bring into operation Section 23, Sub-section (4), because it does not constitute a breach of Sub-section (4) of Section 22. For the purpose of that argument it is necessary to introduce into Section 22 (4) an express or implied provision that a notice requiring an assessee to produce accounts and documents can only be served before he has made a return and if served after he has made a return, is illegal. To our minds this is a far fetched suggestion, but as it has been accepted in one High Court in India and is relied upon in this case, it is necessary to examine it with some care.

4. It is impossible to deny that the effect of such an interpretation is to make a great part of these sections unworkable, and the view seems to us completely out of touch with the realities of the question to be determined. There is nothing in Sub-section 4 imposing any limitation upon the time when, or the conditions under which, the notice there mentioned is to be served. What possible object an Income Tax Officer can serve by sending a notice to an assessee to produce his accounts and documents before such assessee has made any return at all it is difficult to follow. Why should the legislature have intended, without using express and clear language, to prevent the Income Tax Officer from calling upon an assessee to produce accounts and documents under this sub-section after he has made his return? The object of his doing so is made clear by the next section. If the Income Tax Officer is satisfied that a return is correct, he is directed to make the assessment under Sub-section (1). How is he to be satisfied, if he has any suspicion or grounds for dissatisfaction unless, when he sees the return and has some materials before him for forming a judgment, he can ask to see the books of the assessee? A fortiori, unless he is to obtain private information from secret and possibly unreliable sources, how is he to form a belief u/s 23, Sub-section (2), that the return made u/s 22 is incorrect or incomplete, unless at least he can inform himself by the obvious and elementary method of calling for the books? It is to be observed that the notice which he may serve on the person who made the return u/s 23 (2), is only to be served when the officer has reason to believe that the return made is incorrect or incomplete, and unless the return is, on the face of it, ridiculous or the Income tax Officer has secret information, it is impossible for him to form any honest belief on the subject at all, unless he can secure some materials.

5. It seems to us, therefore, that a great part of the duties of the Income Tax Officer would be rendered practically unworkable if it were to be held that Sub-section (4) of Section 22 could only be worked before a return had been made. The Government Advocate made a valuable criticizm upon the argument. The machinery is slightly different where there is a company and where there is an individual assessee. In the

case of a company, under Sub-section (1) the principal officer is required to prepare and furnish every year, on or before the 15th day of June in each year, a return, whereas the return under Sub-section (2) required of an individual, is only to be made in response to a notice served upon him by the Income Tax Officer to make such return within a specified period. It follows, therefore, that if the argument put forward were to be accepted, the words "before the 15th June in each year" would have to be inserted in the case of the principal officer of any company in Sub-section (4), Section 22, and that, although there is not a word in the statute to suggest it, if the Income Tax Officer did not call upon every company in his jurisdiction before the 15th June to produce accounts and documents required by him-a most burdensome requisition-he would after such company had made its return, be prevented for the rest of that fiscal year from doing so.

6. On this matter we have no hesitation in quoting from the excellent commentary of Mr. Vishvanatha Sastri, a vakil of Madras, the author of the Law and Practice of Income Tax, published in 1922, dealing with this very question of the evidence in support of a return u/s 22. He expresses this opinion:

The Income Tax Officer is empowered to call upon the assessee (whether or not he has made a return) to produce such documents and accounts as he may require within the period specified in the notice requiring their production. Sub-8. (4) prevents the Income Tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the accounting period. There is, however, no such limitation upon the power to call for documents. In the case of trades and business, the Income Tax Officers require, in addition to the profit and loss account, a copy of the balance sheet. Provided the return which had been made is a correct one, the submission of these documents cannot prove detrimental to the tax-payer.

7. We agree with that opinion. The matter seems to us to be simple, and really it would seem almost unarguable, if it were not for the decision arrived at by the Patna High Court set out in Appendix (c) to the case. We respectfully differ from that decision and find it somewhat difficult to follow. The fallacy, if we may say so, is based upon the assumption which, in our view, there is nothing to justify, that a notice u/s 22 (4) can only be given to a person who has not made a return, and that if it is given after a return has been filed, such a notice is illegal. One of the reasons given in the judgment is that the words, "having made a return," which occur in the third case of default in Section 23 (4), create some antithesis between such default and the preceding default of failing to comply with a notice u/s 22 (4). We cannot follow this. It is not a case where any antithesis is required. To our minds the words merely mean what they say, and have no other object than that, which the Government Advocate pointed out, of emphasizing the fact that the third default, namely failure to comply with Sub-section (2), Section 23, can only be made by a person who has already made a return, because it is only such a person who can be

served with a notice in accordance with Sub-section (2), Section 23. It is wrong to say that they are meaningless. Many reasons might be given why the draftsman thought it right to insert them where they are. One reason is this that an Income Tax Officer may have honest reason to believe that the return which he has received has been made by the assessee and is incorrect or incomplete, when the return was not in fact made by the assessee at all, and although the Income Tax Officer might have honest reason to believe that it was, and might legitimately serve on such person a notice under Sub-section (2), Section 23, such parson would have a complete answer to an assessment against him to the best of the Income Tax Officer''s judgment under Sub-section (4) by proving that he had not made the return. No doubt this illustration is an extravagant one in the sense that it is unlikely to occur, but in a country in which false documents are so common and false charges are so frequently made out of enmity, it may well have been considered quite possible that a discharged servant or some other enemy might deliberately send in a false return purporting to be by an assessee, which would appear to be incomplete or incorrect on the face of it, for the purpose of inducing the Income Tax Officer to give him, what is called in this country "dik." At any rate, if such a case should occur, the language which we have just cited is appropriate thereto. We, therefore, answer the first part of the question in the affirmative and the second in the negative agreeing with the Commissioner. The assessee must pay the costs. We fix the fee at Rs. 150. Ten days will be allowed for filing of the certificate.