

# ALLAHABAD HIGH COURT

Kajori Mal Kalyan Mal

Vs

commr. Of Income Tax

(Dalal, J.)

05.04.1929

## JUDGMENT

**Dalal, J.**

1. This is a statement of the case by the Commissioner of Income-tax under Section 66(2), Income-tax Act, 1922.

2. The facts are given in the statement and very briefly are these. There is a joint Hindu family of which Lala Kalyanmal seems to be the head. He was called upon by the Income-tax Officer to furnish a return of the income by a notice which was served on Lala Kalyanmal on 13th April 1928. The notice was under Section 22(2) of the Act and called upon the proposed assessee to make his return of income by 12th May 1928. It will be noticed here, for this is a very important matter, that the proposed assessee had only 29 days within which to comply with the order. Kalyanmal failed to comply with the order, and on 19th May 1928, the Income-tax Officer called on Lala Kalyanmal, by means of a notice issued under Section 22(4), to submit his account books on 28th May 1928. On that date, Lala Kalyanmal did appear with the account books. He was able to persuade the Income-tax Officer to grant him five days' more time to file a return of his income. Time was granted up to 2nd June 1928. On that date, Lala Kalyanmal did not turn up, nor did he furnish any return of the income. What he did, however, was that he sent a Civil Surgeon's certificate to the effect that his son had left Cawnpore because his (son's) wife was suffering from consumption and that he himself was suffering from a toothache. His application was disallowed and on 2nd June 1928, an assessment to the best of the judgment was made by the Income-tax Officer under provisions of Section 23(4) of the Act.

3. Lala Kalyanmal thereupon made an application to the Income-tax Officer to give him a fresh opportunity to file his return. His application was made under Section 27 of the Act. It was rejected by the Income-tax Officer and an appeal to the Assistant Commissioner of Income-tax was also rejected by that officer. Lala Kalyanmal thereupon made an application to the Commissioner of Income-tax to state the case to this Court. Lala Kalyanmal formulated nine

questions of what he thought were points of law. The learned Commissioner has stated those points in the statement of the case and has remarked that these questions were either questions of fact or they did not arise at all. One of the questions, namely (7) was in the following language: Was the serious illness of a female member of the joint Hindu family which involved male members into perplexity and anxiety, and petitioner's illness from toothache... not sufficient cause for the purpose of Section 27 or adequate reason for granting further extension of time.

4. As regards this point, the Commissioner was of opinion that it was a question of fact and not a question of law. Having, however, said so much, the learned Commissioner formulated the following question for determination by this Court: Was the assessee prevented by sufficient cause from making the return required by Section 22?

5. The question as framed by the learned Commissioner is a mixed question of fact and law, but the question of law can be answered only when the facts have been determined. If the facts be as is stated in question 7, formulated by Lala Kalyanmal and if those facts be accepted as true, then a question might arise, whether those facts might be treated as a sufficient cause, in law, within the meaning of Section 27 of the Act. We find that the Commissioner himself, the Assistant Commissioner of Income-tax and the Income-tax Officer, have all discredited the allegation as to illness and as to whether the alleged facts prevented any interruption of Lala Kalyanmal's business. In the circumstances, we are of opinion that no question of law, as framed, arises in the case.

6. Having, however, said so much, we have found that there is a very substantial question of law raised in the statement of the case.

7. We have already held, in another case, that it is open to the High Court to formulate questions of law that really arise in a case and to answer them for the benefit of the Commissioner and the parties. The substantial question of law that arises in this case is whether the notice that was issued to Kalyanmal under Section 22(2) of the Act was at all a legal notice. Under that rule of law the Income-tax Officer must give the proposed assessee at least thirty days' time within which to file a return. Even this minimum was denied to Lala Kalyanmal and in our opinion, the notice was entirely illegal. The fact that subsequently five days' time was granted to Lala Kalyanmal (from 28th May 1928, to 2nd June 1928) will not cure the defect that initially lay in the notice is sued. Our opinion is that the notice issued being illegal, there could be possibly be no valid statement of Income-tax under Section 23(4).

8. We may mention here that we have heard the learned Government Advocate on the point and our decision has been arrived at after hearing him on this point. We direct that a copy of this opinion be sent under the seal of the Court to the Commissioner of Income-tax. We direct that the parties pay their own costs, in view of the fact that this point, namely the illegality of the notice, was never raised before. We allow the Government Advocate to file certificate of fees for Rs. 100

within the allotted period of thirty days.

