

necessary to refer to them as, in my opinion, the ques- Firm Paharia
tion involved in this appeal depends on the intention Mal-Ram
of the parties expressed in the contract or to be in Sahai
ferred therefrom or from the conduct of the parties v.
and relying on these matters I have come to the con- Birdhi Chand
clusion that the decision of the learned Single Judge Jain and Sons
decreeing the plaintiff's suit is correct. _____
Bishan Narain,
J.

For the reasons given above this appeal fails and is dismissed. In the circumstances of the case, however, I order that the parties shall bear their own costs throughout.

BHAHDARI, C. J.—I agree.

Bhandari, C.J.

CIVIL WRIT

Before Bhandari, C.J. and Bishan Narain, J.

SHRI BISHAN LAL KUTHIALA,—*Petitioner*

v.

THE INCOME-TAX OFFICER, SPECIAL CIRCLE,
AMBALA CANTONMENT, ETC.,—*Respondents*

Civil Writ No. 326 of 1955.

Income Tax Act (XI of 1922)—Sections 5(7A) and 22(4)—Whether repugnant to the provisions of Article 14 of the Constitution and hence ultra vires.

1956

March 19th

Held, that the provisions of section 5(7A) of the Income-tax Act which empower the Commissioner to set up a Special Circle, are not repugnant to the provisions of Article 14 of the Constitution, first, because the powers exercised by the Income-tax Officer of a Special Circle are not different in any way from those exercised by an Income-tax Officer of another circle and secondly, because an assessee who is aggrieved by his order has the same rights of appeal, revision and review as are available to the other assessees.

Held, that section 22(4) of the Income-tax Act, as amended, is not repugnant to Article 14 of the Constitution. It merely provides that before an Income-tax Officer proceeds to call for the world income of an assessee, he should

obtain the approval of the Commissioner. The amendment does not confer unbridled power on the Income-tax Officer to call for the return of world income from every assessee ; on the other hand, it is designed to secure that if such returns are required from an assessee, they should be called for with the approval of the Commissioner.

Petition under Articles 226 and 227 of the Constitution of India, praying that this Hon'ble Court may be pleased to issue writs of certiorari and prohibition against the respondents directing them to send up the files of the petitioner's case maintained in their respective offices containing the aforesaid illegal approval by Respondent No. 2 and the notice issued by Respondent No. 1, with a view to enabling this Hon'ble Court to quash these illegal proceedings and to prohibit and restrain the respondents from proceeding against the petitioner in this matter and further praying that pending disposal of this Writ petition it be ordered that the respondents should refrain from compelling the petitioner to submit the wealth statement.

D. K. MAHAJAN and D. N. AVASTHY, for Petitioner.

S. M. SIKRI, Advocate-General, and H. R. MAHAJAN, for Respondents.

ORDER.

Bhandari,
C.J.

BHANDARI, C. J.—This petition raises the question whether the provisions of sub-section (4) of section 22 of the Income-tax Act are repugnant to the provisions of Article 14 of the Constitution.

The petitioner in this case is one Shri B.L. Kuthiala, who is carrying on business in timber both in Hoshiarpur and in Kashmir. On the 1st May, 1953, the Income-tax Officer of Simla issued a notice to him under the provisions of section 22 (2) and section 38 of the Income-tax Act requiring him to make a return of his total income. In September, 1953, the Commissioner made an order under section 5(5) and (7A) of the Income-tax Act withdrawing the petitioner's case from the Income-tax Officer, Simla,

and transferring it to the Income-tax Officer, Special Circle, at Ambala. The Income-tax Officer of the Special Circle sent a notice to the petitioner under section 22(4) of the statute requiring him to furnish a statement of his assets and liabilities not included in the accounts. The petitioner protested against this requisition and raised a number of objections in regard to the validity of the demand and in regard to the validity of the statutory provisions under which the demand was made. The Commissioner rejected the representation and directed the Income-tax Officer, Special Circle, to proceed with the case. The petitioner is dissatisfied with the order and has come to this court under Article 226 of the Constitution.

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Ambala
Cantonment

Bhandari, C. J.

The first point for decision in the present case is whether the provisions of section 5(7A) which empower the Commissioner to set up a special circle are repugnant to the provisions of Article 14 of the Constitution. The answer appears to me to be in the negative, firstly because the powers exercised by an Income-tax Officer of a Special Circle are not different in any way from those exercised by an Income-tax Officer of another circle, and secondly because an assessee who is aggrieved by his order has the same rights of appeal, revision and review as are available to other assessees. In *Bhagwan Das v. Income-tax Officer, Special Circle* (1), the learned Judge came to the conclusion with which we find ourselves in complete agreement, that the setting up of a special circle is not inconsistent with the provisions of Article 14.

The second question relates to the validity of section 22 of the Statute. Subsection (1) of this section requires the Income-tax Officer to issue a general notice by publication in the press or such other

(1) (1956) 29 I.T.R. 330

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means as may be prescribed requiring every person who is liable to pay tax to submit a return in respect of his income. Subsection (2) empowers the Income-tax Officer concerned to issue notices to persons who have failed to submit their returns. Subsection (4) authorises him to serve on any person who has made a return under subsection (1) or upon whom a notice has been served under subsection (2) a notice requiring him to produce or cause to be produced such accounts or documents as the Income-tax Officer may require. This subsection was recently amended by the addition of the following words:—

“or furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including, with the previous approval of the Commissioner, a statement of all assets and liabilities not included in the accounts) as the Income-tax Officer may require for the purposes of this section.”

It is contended on behalf of the petitioner that by empowering the Income-tax Officer with the approval of the Commissioner to obtain a statement of the world income of an assessee, the legislature has done something which it was not empowered to do, for it has enabled the Income-Tax Officer and the Commissioner to discriminate between an assessee from whom a return of world income is required and another assessee from whom no such return is required. This provision, it is contended, vests arbitrary powers in the Income-Tax Officer to discriminate between different assessees and to decide with the approval of the Commissioner which assessee should be required to furnish a statement of world income and which assessee should not. I regret, I am, unable to concur in this view. Mr. Mahajan who appears for the petitioner frankly admits that the provisions of sub-sections (1), (2), (3), and (4) as originally enacted are not *ultra vires*

the Constitution even though they empower the Income tax Officer to secure the information which is necessary for the purposes of assessment. He contends, however, that the recent amendment is repugnant to the provisions of the Constitution inasmuch as it vests arbitrary powers in the Income-tax Officer to discriminate between different assesseees and to decide, with the approval of the Commissioner, which assessee should be required to furnish a statement of world income and which assessee should not.

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I regret, I am unable to concur in this contention. Subsection (4) of section 22 merely provides that before an Income-tax Officer proceeds to call for the world income of an assessee he should obtain the approval of the Commissioner. The recent amendment does not confer unbridled power on the Income-tax Officer to call for returns of world income from every assessee; on the other hand, it is designed to secure that if such returns are required from an assessee they should be called for with the approval of the Commissioner.

Nor can it be said that the Income-tax Officer failed to obtain the approval of the Commissioner in the present case. In paragraph 9 of the petition it was stated that according to the petitioner's information the Income-tax Officer of the Special Circle sent to the Commissioner of Income-tax a list of cases in which the approval of the Commissioner was required without giving any reasons therefor and that the Commissioner conveyed his approval in all cases without exception and without having any material before him that such a notice was justified in any of the individual cases included in the list submitted to him by the Income-tax Officer. In reply to this allegation it was mentioned in the written statement that the Commissioner after considering the petitioner's case accorded his approval under the provisions of section 22(4) of

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the Income-tax Act to the Income-tax Officer calling a statement of his assets and liabilities not included in the accounts. It is alleged that the written statement does not contain a categorical denial of the assertion that the Commissioner accorded his approval without having any material before him to satisfy himself that the notice was justified and that in the absence of this denial it must be assumed that the facts stated in paragraph 9 of the petition are admitted. This contention cannot, in my opinion, bear a moment's scrutiny. At no place was it admitted in the written statement that the Commissioner accorded his approval without examining the facts. On the contrary the court is entitled to presume that all official acts are regularly performed and that every public servant discharges his duties in accordance with the provisions of law. It must be assumed, therefore, that before according his approval in the present case the Commissioner had satisfied himself in regard to the necessity of calling for the world income of the assessee.

For these reasons I am of the opinion that the provisions of subsection (4) of section 22 of the Income-tax Act cannot be held to be *ultra vires* the Constitution. The petition is, in my opinion, wholly devoid of force and must be dismissed with costs which I assess at Rs. 150.

Bishan Narain.
J.

BISHAN NARAIN, J.—I agree.

CIVIL WRIT

Before Bhandari, C.J. and Khosla, J.

SHANKAR DASS,—Petitioner

v.

THE UNION OF INDIA,—Respondent

Civil Writ No. 66 of 1954.

1956
Sept. 1st.

Constitution of India, Article 311—Person employed in a State Railway—Whether member of a Civil Service or holder of a Civil post under the Union—Whether entitled to