the High Court. Mr. Jain, to whom these cases were transferred, has proceeded on leave and is likely to be posted to a station in the Punjab. I am accordingly of the opinion that these cases should be re-transferred to the Court of S. Gurdev Singh who has examined a considerable number of witnesses and has now more time to spare for the trial of these cases. I would order accordingly.

Parties have been directed to appear before S. Gurdev Singh tomorrow.

Falshaw, J. I agree.

CIVIL MISCELLANEOUS

Before Bhandari, C.J. and Falshaw, J.

M. MOHD. ISHAQ,—*Applicant*

versus

THE COMMISSIONER OF INCOME-TAX, DELHI, AJMER-MERWARA,—*Respondent*

Civil Miscellaneous No. 18 of 1952

1953

Dec. 9th

Indian Income-tax Act (XI of 1922)—Section 66 (2)—Whether an assessee was afforded a reasonable opportunity of producing his accounts and furnishing his evidence under sections 22 (4) and 23 (2) are questions of law or not.

Held, that the question whether an assessee was given reasonable opportunity to produce evidence in support of the return and whether the time given was so short as not to be reasonable, are questions of law and should have been referred to the High Court under section 66 (2).

Petition under section 66 (2) of the Indian Income-tax Act, 1922, praying that the learned Bench of Income-tax Appellate Tribunal, New Delhi, be asked to state to the Hon'ble High Court all the five questions of law as formulated by the applicant and that the said questions be answered in applicant's favour and costs awarded.

P. N. CHOPRA, for Appellant.

A. N. KIRPAL, for Respondent.

ORDER

BHANDARI, C. J. These three applications under section 66(2) of the Income-tax Act relate to

Bhandari, C. J.

M. Mohd. Ishaq
v.
The Commissioner of Income-tax, Delhi, Ajmer-Merwara

Bhandari, C. J.

assessments for the years 1947-48, 1948-49 and 1949-50 and raise a common question of law, namely, whether the assessee was afforded a reasonable opportunity of meeting the case of the Income-tax Department.

The assessee in this case is one Mohammed Ishaq who is carrying on business in Sadar Bazar at Delhi. On the 11th August 1949, he appeared before the Income-tax Officer at Delhi, and submitted returns in respect of his income for the years 1947-48 and 1948-49. The Income-tax Officer recorded his statement and served him with a notice under section 23(2) of the Act requiring him to produce immediately the evidence on which he relied in support of the returns. The latter asked for time to produce his evidence and the case was accordingly adjourned to the 8th October 1949. On the 10th October 1949, Mr. Pardhuman Kumar, counsel for the assessee, appeared before the Income-tax Officer and stated that the assessee had to leave suddenly for Bombay two days before as his daughter had been taken seriously ill. The counsel produced the assessee's pass book issued by the Punjab National Bank. On the 13th October 1949, the Income-tax Officer issued a notice to the assessee under section 22(4) of the statute requiring him to appear on the following day and to produce the accounts and documents mentioned in the order. The assessee appeared before the Income-tax Officer as directed but he expressed his inability, in view of the shortness of time, to produce the accounts or documents required of him. The Income-tax Officer declined to adjourn the case for the production of books of account and proceeded to record an order in which he stated that on the basis of information which he had obtained from other sources he was satisfied that the assessee had been supplying tin scrap for several years to various factories in Delhi. He accordingly assessed the assessee's income at Rs. 1,75,000 from scrap business alone. The assessments were made for the years 1944 to 1950, and were confirmed by the Appellate Assistant Commissioner in appeal.

M. Mohd. Ishaq v. The Commissioner of Income-tax, Delhi, Ajmer-Merwara

Bhandari, C. J.

The assessee preferred six separate appeals to the Income-tax Appellate Tribunal at Delhi in which he challenged the correctness of the assessments for the years 1944 to 1950. One of the grounds taken up in the memorandum was that the assessment was vitiated in law as the assessee had not been afforded a reasonable opportunity (a) of producing his accounts and furnishing his evidence under sections 22(4) and 23(2) of the Income-tax Act and (b) of rebutting the conjectures and allegations of the Income-tax Officer which were based on the so-called enquiries but regarding which no information whatever was imparted to the assessee himself. The Tribunal held that the assessments for the years 1944 to 1947, were out of jurisdiction, that the income from tin scrap business should be computed at Rs. 50,000 for the year 1947-48 and Rs. 1,00,000 for the year 1948-49 and that the income for the year 1949-50 had been correctly assessed. In the result, therefore, the appeals against the 1944-45, 1945-46 and 1946-47, assessments were allowed *in toto*, the appeals against the 1947-48 and 1948-49, assessments were allowed *pro tanto* and the appeal against the 1949-50 assessment was dismissed. In dealing with the objection taken up by the assessee that he had not been afforded a reasonable opportunity of rebutting the various assumptions on which the assessment was based the Tribunal observed as follows:

> "The assessee contends that the tin scrap business was started after the communal disturbances in 1947.....The Income-tax Officer, on the other hand, found that the assessee had been supplying tin scrap for several past years to various factories in the jurisdiction of that officer. It is true that the assessee was not faced with this position or given an opportunity to explain the transactions which he had with the factories concerned ....."

M. Mohd. Ishaq
v.
The Commissioner of Income-tax, Delhi, Ajmer-Merwara

Bhandari, C. J.

On the 29th September 1951, the assessee requested the Tribunal to draw up a statement of the case under section 66(1) of the statute and refer five questions of law to this Court including the question embodied in paragraph 4(ii) of the application which was in the following terms:—

> "(ii) whether under the circumstances of the case and especially in view of the finding of the learned Tribunal that the assessee was not faced with the assumptions of the learned Income-tax Officer or given an opportunity to explain those, the assessment, without affording any further opportunity in the matter was sustainable in law and not liable to be wholly set aside ?"

The Tribunal decided to refer only one of the five questions which were propounded by the assessee but declined to refer the question which has been reproduced above.

Early in September 1952, the assessee presented to this Court three separate applications under section 66(2) of the Income-tax Act relating to the years 1947-48, 1948-49 and 1949-50 in which he requested that the Appellate Tribunal be asked to state to this Court all the five questions of law which were formulated by him. When the case came up for hearing, however, the learned counsel for the assessee wished us only to request the Tribunal to state whether in the circumstances of the case the assessments were made without affording a reasonable opportunity to the assessee to rebut the assumptions of the Income-tax Officer and, if so, whether the said assessments are sustainable in law.

There can be little doubt that a person is entitled to be heard before he can be saddled with a pecuniary liability. It is true that public revenues are to be collected promptly and expeditiously but it must be remembered that if an Income-tax Officer recovers any tax except in accordance with the procedure established by law it is a taking of property in contravention of the

provisions of Article 31 of the Constitution. The law as embodied in the Income-tax Act empowers an Income-tax Officer to serve a notice on any person requiring him to produce such accounts or documents as he may require [section 22(4)]. It also empowers him to issue a notice to any assessee requiring him to produce any evidence on which he may rely in support of his return [section 23(2)]. The Legislature has declared in unambiguous language that save in special circumstances, administrative process for assessing and collecting the income-tax should not be allowed to proceed without adequate notice and hearing. These provisions of law are not idle formalities which may or may not be complied with as the Income-tax Officer may desire; on the contrary they appear to me to have been enacted with the express object of affording protection to the tax-payer against arbitrary and capricious assessment. If unfairly used these provisions can deprive the assessee of what is intended to be assured to him.

The learned counsel for the assessee cites two specific instances in support of his contention that his client has not had a fair deal. He appeared before the Income-tax Officer on the 11th August 1949, and was served with a notice under section 23(2) requiring him to produce immediately any evidence on which he relied in support of his returns. He could not possibly comply with the requisition at a moment's notice and asked for a short adjournment. The Income-tax Officer acceded to his request and directed him to produce the evidence on the 8th Ocober 1949. The assessee, it is contended, would have produced his evidence on that day had it not been for the fact that on that day his daughter was taken suddenly ill and had to be taken immediately to Bombay. Notwithstanding the predicament in which he found himself the assessee sent his pass book to his counsel who produced it before the Income-tax Officer on the 10th October 1949. It is said that the circumstances which had prevented the assessee from appearing before the Income-tax Officer were fully explained by the counsel but that the Income-

M. Mohd. Ishaq
v.
The Commissioner of Income-tax, Delhi, Ajmer-Merwara

Bhandari, C. J.

tax Officer declined to give any further opportunity to the assessee to produce his evidence even though there was nothing to indicate that the failure on the part of the assessee to appear on the 10th October was unjustified. Secondly, it is said that on the 13th October 1949, the Income-tax Officer issued a notice to the assessee under section 22(4) of the statute requiring him to produce certain accounts and documents on the following day. These accounts, it is alleged, could not be produced in so short a time. The Income-tax Officer would not grant a short adjournment to enable the books to be produced and proceeded immediately to make an assessment on the basis of factual data which he had obtained behind the back of the assessee and which the assessee was not allowed to explain. It is contended that while the assessee was compelled to reveal his case at a moment's notice the Income-tax Officer did not afford a reciprocal privilege to the assessee of communicating to him the information which he had collected from other sources and on which the administrative determination was about to be based. Reliance is placed also on an observation of the Tribunal itself that the assessee was not faced with the assumptions of the Income-tax Officer and was not afforded an opportunity to explain the transactions which he had with the factories concerned.

There is, in my opinion, considerable force in the arguments which have been addressed to us on behalf of the assessee. I am particularly impressed with the contention that it was not possible for the assessee to produce his books of account on the 14th October when the notice requiring him to do so was issued only a day before. As pointed out by Rankin, C.J., in *Messrs Sadaram-Puranchand* v. *The Commissioner of Income-tax, Bengal* (1), the question whether an assessee was given reasonable opportunity to produce evidence in support of the return and whether the time given was so short as not to be reasonable are questions of law for reference to the High Court.

(1) 5 Income-tax Cases 459

M. Mohd Ishaq
v.
The Commissioner of Income-tax, Delhi, Ajmer-Merwara

Bhandari, C. J.

For these reasons I am of the opinion that the Appellate Tribunal was not justified in holding that the question which the assessee wanted to be referred to this Court was not a question of law. I would ask the Appellate Tribunal to refer the following question to this Court under section 66(2) of the Act, namely:—

> "Was the assessee in the present case afforded a reasonable opportunity to produce his books of account, to produce his evidence in support of the returns and to rebut the case set out by the Income-tax Department? If the answer is in the negative, are the assessments for the years 1947-48, 1948-49 and 1949-50, liable to be set aside?"

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Falshaw, J.

THE PUNJAB NATIONAL BANK, LTD.,—*Appellant*

versus

KIRPA RAM AND OTHERS,—*Respondents*

Second Appeal from Order No. 1-D of 1952

1953

Dec. 10th

Banker and Customer—Accounts—Suit for when lies against a Bank—Extraordinary state of affairs created by partition of India in August, 1947, whether justifies such a suit.

Held, that there is no doubt that ordinarily a suit for recondition of accounts will not lie by a constituent against a bank, but at the same time there is equally no doubt that an extraordinary state of affairs came into existence with the partition in August 1947. There must indeed be a very large number of constituents and banks which find themselves in the position of the present parties, namely, that sums of monies were advanced to constituents in Pakistan on the security of goods pledged on the spot and now the constituents are displaced persons living in India, and the banks have also lost possession of their branches in Pakistan, and also consequently lost possession