

## INCOME-TAX REFERENCE.

*Before Rankin C.J. and Pearson J.*

COMMISSIONER OF INCOME-TAX, BENGAL

v.

SHAW WALLACE & CO.\*

1931

April 20, 27.

*Privy Council—Leave to appeal—Limitation—Period for obtaining copy of judgment, if to be deducted—Indian Limitation Act (IX of 1908), s. 12; Sch. I, Arts. 179, 181.*

In this case, on a reference under section 66 (2) of the Indian Income-tax Act, judgment was pronounced on the 13th January, 1931, and a copy of the judgment was sent to the Commissioner of Income-tax on the 21st January, 1931, and the Commissioner received it on the 26th January, 1931. The application for leave to appeal to the Privy Council was filed in the office of the High Court on the 31st March, 1931, and notice of motion was served for the 20th April, 1931.

*Held* that the case must be governed by Article 179, and not Article 181, of the Limitation Act, and the Commissioner is entitled to deduct the period taken by the High Court Office to supply him with a copy of the judgment.

### APPLICATION FOR LEAVE TO APPEAL.

Necessary facts appear from the judgment.

*L. P. E. Pugh* (with him *S. Chaudhuri*) for the respondents. This application is out of time. See Chapter XXXIII, rule 3 of the Rules of the Original Side, High Court, and *Khetter Mohun Sing v. Kassy Nath Sett* (1) and *Hinga Bibee v. Munna Bibee* (2).

[*Sircar*. We get time under section 12 of the Limitation Act.]

This is not a decree, it is merely an opinion of the court and they need not file the order, under the rules.

[*RANKIN C. J.* Then Article 179 would not apply.]

In any event, if they want a deduction from the period, they must bring themselves strictly within section 12 of the Act.

\*Application for leave to Appeal to His Majesty in Council, in Income-tax Reference, No. 8 of 1930.

(1) (1893) I. L. R. 20 Calc. 899.

(2) (1903) I. L. R. 31 Calc. 150.

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*Radhabinode Pal* (*N. N. Sircar, Advocate-General*, with him) for the appellant. Under section 65 (5) of the Income-tax Act, the Commissioner does not have to apply for a copy of the judgment. Article 179 of the Limitation Act cannot apply, for that talks of decrees. If the word "decree" is taken in the sense of Order XLV, rule 1, it cannot apply to orders in the sense of section 190 (c) of the Civil Procedure Code. Article 181 is the proper Article to apply.

If, however, Article 179 is applicable we get the benefit of section 12 of the Limitation Act. We are entitled to deduct the period from the date of judgment to the date when the copy of it was forwarded.

Also, this is a suitable case for extension of time to be granted under section 5 of the Limitation Act.

*Pugh*, in reply. There cannot be three years for appeal and Article 179 must apply. It is really an appeal under the Civil Procedure Code which governs the provisions of the Income-tax Act.

There is no "time requisite" in this case, as he does not have to apply for a copy of the judgment, and so he cannot get any deduction under section 12, Limitation Act.

And section 5 of the Limitation Act does not apply, for this is not really a question of original side practice.

RANKIN C. J. This is an application by the Commissioner of Income-tax, Bengal, for a certificate that the case is a fit one to be taken on appeal to His Majesty in Council, under section 66A of the Indian Income-tax Act which involves the same considerations as are involved in clause (c) of section 109 of the Code of Civil Procedure. The sum of money at stake, upon which the tax is claimed, is very large and I am satisfied that the question, as to whether income-tax is claimable on this money, is a very important question, both from the point of view of the assessee and from the point of view of the treasury. *Prima facie*, I should have no difficulty in saying that this

case is exactly of the type which is contemplated by clause (c) of section 109 of the Civil Procedure Code and which comes under clause (2) of section 66A of the Income-tax Act. It is said, however, that, in this case, the application for a certificate has been brought out of time.

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The facts are that the judgment was pronounced on the 13th of January, 1931, and that the application for this certificate was filed in the office of the Court on the 31st of March, 1931. This was filed, together with a notice of motion served on the same day, calling upon the assesseees to appear before this Court on the 20th of April. It ought to be explained that this Court usually takes applications of this character on Mondays and that, in the ordinary way, these applications are dealt with as listed motions—the papers being filed in the office first. The Easter Vacation began, in this Court, on the 3rd of April and at the time, namely, the 31st of March, 1931, four clear days' notice requisite for a notice of motion would have taken the applicant into the vacation. The Court re-opened on Tuesday, the 14th of April and, in the ordinary way, 20th of April, being a Monday, would be the first day on which it was convenient for this Court to deal with this motion. For this reason, the notice of motion was given for that day.

Under the Indian Income-tax Act, a copy of this Court's judgment has to be sent to the Commissioner under the seal of the Court. This was sent to the Commissioner in due course and was received by him on the 26th of January, 1931. If the period between the 13th of January, and even the 21st of January, be deducted under section 12 of the Limitation Act, then the applicant is in time and he does not require us to make any order in his favour under section 5 of the Limitation Act.

It appears to me, when one comes to look at the Article in the Limitation Act applicable, that the case must be governed by Article 179, rather than by Article 181 and I think, therefore, that the date of

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the judgment in a case of this sort must be the date from which the time has to be counted. I also think that, under section 12, a party in a case such as this is entitled to the time required to obtain a copy of the judgment. Nothing the Commissioner could have done would have given him a copy of the judgment sooner than he got it, namely, on the 26th of January, 1931. I am not of opinion, therefore, that the application is out of time.

It appears that, on the 31st of March, the applicant, by his advocate, applied to this Court asking for special leave to serve short notice of motion, so that the matter might come on before the Easter Vacation. It appeared to the court that that would not have been a convenient course and paragraph 17 of the petition, which has been filed on the part of the Commissioner, sets out the facts. I am quite prepared, were it necessary, upon the strength of that paragraph to extend the time under section 5 of the Limitation Act.

In my judgment, a certificate must issue as asked for.

PEARSON J. I agree.

*Leave granted.*

Advocate for appellant: *Radhabinode Pal.*

Solicitors for respondents: *Orr Dignam & Co.*

S. M.