INCOME-TAX REFERENCE.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Gentle and Mr. Justice Somayya.

1939, March 7.

THE COMMISSIONER OF INCOME-TAX, MADRAS (RESPONDENT IN THE ORIGINAL PETITION), APPLICANT,

v.

VOORA SREERAMULU CHETTY (PETITIONER IN THE ORIGINAL PETITION), RESPONDENT.*

Indian Income-tax Act (*XI of* 1922), *sec.* 66 (3)—*Application to High Court under, on refusal of Commissioner of Income-tax to state a case on the ground that order was not prejudicial within meaning of sec.* 66 (2) *read with section* 33 *of the Act—Full Bench decision to the effect that order was a prejudicial order and order of Bench dealing with application under sec.* 66 (3) *requiring Commissioner to state a case—Appeal to Privy Council against—Certificate permitting—Jurisdiction of High Court to grant—Letters Patent* (*Madras*), *Cls.* 39 *and* 40—*Applicability and effect of.*

The respondent (assessee) applied to the Commissioner of Income-tax to state a case on a question arising under section 25 (3) of the Indian Income-tax Act of 1922. The Commissioner, relying upon *Venkatachalam* v. *Commissioner of Income-tax, Madras*(1), refused to state a case on the ground that the order was not prejudicial within the meaning of section 66 (2) read with section 33 of the Act. The respondent then applied to the High Court under section 66 (3) and the Bench before which that application came, feeling some doubt as to the correctness of the decision in *Venkatachalam's* case, *Venkatachalam* v. *Commissioner of Income-tax, Madras*(1), referred the question of its correctness to a Full Bench of five Judges. The Full Bench held that that case had been wrongly decided and on receipt of its answer the Bench dealing with the respondent's application directed the Commissioner of

* Application for leave to appeal to His Majesty in Council in Original Petition No. 146 of 1938.

(1) (1934) I.L.R. 58 Mad. 367.

Income-tax to state a case on the point of law involved. The Commissioner thereupon applied for a certificate permitting an appeal to His Majesty in Council.

COMMISSIONER OF INCOME-TAX, MADRAS v. SREERAMULU.

Held that the High Court had no jurisdiction to grant a certificate.

Admittedly the High Court has no jurisdiction to grant a certificate under section 66-A (2) of the Income-tax Act. *Tata Iron and Steel Company, Limited* v. *Chief Revenue-authority of Bombay*(1) is authority for the position that an appeal does not lie under Clause 39 of the Letters Patent from a decision of the High Court in an income-tax matter since the decision is merely advisory and is therefore not a final judgment, decree or order within the meaning of that clause. It follows that there can be no appeal, and no authority for the High Court to grant a certificate permitting an appeal, to His Majesty in Council under the provisions of Clause 40 of the Letters Patent.

APPLICATION for leave to appeal to His Majesty in Council in Original Petition No. 146 of 1938, the judgment in which is reported as *Sreeramulu v. Commissioner of Income-tax, Madras*(2).

M. Patanjali Sastri for Commissioner of Income-tax.

K. Bhimasankaran for respondent.

JUDGMENT.

LEACH C.J.

LEACH C.J.—This is an application for a certificate permitting an appeal to His Majesty in Council from an order of this Court in an income-tax matter. The respondent has taken the preliminary objection that this Court has no power to grant a certificate in this case.

The respondent applied to the Commissioner of Income-tax to state a case on a question arising under section 25 (3) of the Income-tax Act. The Commissioner, relying on the decision of this Court in *Venkatachalam* v. *Commissioner of Income-tax, Madras*(3),

(1) (1923) L.R. 50 I.A. 212; I.L.R. 47 Bom. 724.
(2) I.L.R. [1939] Mad. 358. (3) (1934) I.L.R. 58 Mad. 367.

COMMISSIONER OF INCOME-TAX, MADRAS v. SREERAMULU.

LEACH C.J.

refused to state a case on the ground that the order was not prejudicial within the meaning of section 66 (2) read with section 33. In *Venkatachalam's* case(1) an application was filed in the office of the Income-tax Officer for a refund of income-tax under the provisions of section 48 of the Act. The application was rejected and the Commissioner refused to interfere by an order under section 33. The applicant then applied to this Court under section 66 (3). As the order of the Commissioner was not one enhancing the assessment and as it was considered that it was not "prejudicial" to the petitioner, the Court held that the application by him to the Commissioner under section 66 (2) was incompetent. As some doubt was felt as to the correctness of this decision when the case out of which the present application arises came before the Court, a reference was made to a Full Bench of five Judges, and the answer given to the reference was that an order refusing to interfere with a prejudicial order was itself prejudicial. Consequently it was held that *Venkatachalam* v. *Commissioner of Income-tax, Madras*(1) had been wrongly decided. On receipt of the answer given by the Full Bench to the question referred, the Bench dealing with the petition directed the Commissioner of Income-tax to state a case on the point of law involved. The Commissioner of Income-tax desires to challenge the correctness of the decision of the Full Bench in an appeal to His Majesty in Council.

Section 66-A (2) provides that an appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in a case which the High Court certifies to be a fit one for appeal. Mr. Patanjali Sastri, on

(1) (1934) I.L.R. 58 Mad. 367.

behalf of the Commissioner of Income-tax, concedes that the Court has no jurisdiction to grant a certificate under section 66-A (2), but says that it has power to do so under Clause 40 of the Letters Patent. Clause 40 has to be read in conjunction with Clause 39. Clause 39 gives a right of appeal to the Privy Council in a matter, not being of criminal jurisdiction, from a final judgment, decree or order made on appeal and from a final judgment, decree or order made in the exercise of original jurisdiction by Judges of the High Court or of a Division Court from which an appeal does not lie to the High Court under Clause 15 of the Letters Patent. Then follows a proviso to the same effect as the provisions of sections 109 and 110 of the Code of Civil Procedure. Clause 40 provides that the Court, at its discretion, may grant leave to appeal from a preliminary or interlocutory judgment, decree, or order, in a proceeding contemplated by Clause 39, subject to the same rules, regulations and limitations which apply to appeals from final judgments, decrees or orders.

In the case of *Tata Iron and Steel Company, Limited* v. *Chief Revenue-authority of Bombay*(1) the Judicial Committee held that an appeal did not lie under Clause 39 of the Letters Patent of the Bombay High Court (which corresponds to Clause 39 of the Letters Patent of this Court) from a decision of the High Court upon a case stated and referred to the Court under the Income-tax Act, 1918, since the decision was merely advisory and therefore was not a final judgment, decree, or order within the meaning of the clause. In that case it was not argued that the decision was an interlocutory judgment, order or decree within the meaning of Clause 40, but the argument is advanced here. It is said that the

(1) (1923) L.R. 50 I.A. 212; I.L.R. 47 Bom. 724.

COMMISSIONER OF INCOME-TAX, MADRAS v. SREERAMULU.

LEACH C.J.

judgment of this Court in the Full Bench reference constitutes an interlocutory judgment within the meaning of that clause and that the order directing the Commissioner of Income-tax to state a case based on the judgment of the Full Bench is also within the clause. In my opinion these contentions cannot be maintained. If there is no appeal from a final order in an income-tax matter, apart, of course, from the appeal now given under section 66-A (2), it is difficult to understand how there can be an appeal from an interlocutory order in such a matter. I regard the direction which was given to the Commissioner of Income-tax to state a case as being an interlocutory order in a matter in which the Court was required to act in an advisory capacity and the reference to the Full Bench formed part of the interlocutory proceedings. The *Tata* case(1) is final on the question whether there is an appeal when the Court is acting merely in an advisory capacity under the Income-tax Act and it covers the present case.

The opinion which I have expressed receives support from the decisions in *E. M. Chettyar Firm* v. *The Commissioner of Income-tax*(2) and *Delhi Cloth and General Mills Co.* v. *Income-tax Commissioner, Delhi*(3) and Mr. Patanjali Sastri admits that this Court has followed the decision in *E. M. Chettyar Firm* v. *The Commissioner of Income-tax*(2) in an unreported case. There is a decision of the Lahore High Court, *Feroze Shah* v. *Commissioner of Income-tax*(4), which conflicts with the decisions I have just mentioned, but it is not necessary to discuss it because we are bound by the decisions of this Court.

---

(1) (1923) L.R. 50 I.A. 212 ; I.L.R. 47 Bom. 724.
(2) (1930) I.L.R. 8 Ran. 435.
(3) (1927) I.L.R. 9 Lah. 284 ; 2 I.T.C. 439.
(4) (1931) I.L.R. 12 Lah. 166 (F.B.).

COMMISSIONER OF INCOME-TAX, MADRAS *v.* SREERAMULU.

For these reasons I would hold that the objection taken by the respondent is well-founded and that as the case now stands this Court has no jurisdiction to grant a certificate. The respondent is entitled to the usual costs, Rs. 100.

GENTLE J.

GENTLE J.—I agree and wish to add a few words. It is conceded that under section 66-A (2) of the Income-tax Act there is no authority for this Court to grant a certificate in this matter permitting an appeal to His Majesty in Council and the application is really based upon the provisions of Clause 40 of the Letters Patent. This clause provides an appeal from a preliminary or interlocutory decision "as aforesaid". "As aforesaid", it is conceded by Mr. Patanjali Sastri, refers to the proceedings contemplated by Clause 39 of the Letters Patent. In my opinion this matter is not a final judgment, decree or order within the contemplation of Clause 39. Since it has been held by their Lordships of the Judicial Committee in *Tata Iron and Steel Company, Limited* v. *Chief Revenue-authority of Bombay*(1) that there is no appeal under Clause 39 of the Letters Patent from a decision of the High Court in an income-tax matter, it must follow that there can be no appeal, and no authority for this Court to grant a certificate permitting an appeal, to His Majesty in Council under the provisions of Clause 40 of the Letters Patent. For these reasons I agree with the views expressed by my Lord the CHIEF JUSTICE that this application should be dismissed.

SOMAYYA J.—I agree.

A.S.V.

---

(1) (1923) L.R. 50 I.A. 212; I.L.R. 47 Bom. 724.