

He does not challenge the order directing substitution of names, but urges that the application on which the order was made not having been in accordance with law does not save limitation. We find it difficult to hold that the judgment-debtor in this fresh proceeding is barred from raising this objection. The view taken by the learned Judge is correct. We accordingly dismiss this appeal with costs.

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v.  
HIRA LAL
 

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 MISCELLANEOUS CIVIL
 

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*Before Mr. Justice Niamat-ullah and Mr. Justice Bennet*

SHIVANATH PRASAD (APPLICANT) *v.* COMMISSIONER OF  
INCOME-TAX (OPPOSITE PARTY)\*

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*Income-tax Act (XI of 1922), sections 30(2), 31, 66(2) and (3)—  
Rejection of appeal as barred by limitation—Not equivalent  
to an order of confirmation of assessment—No reference to  
High Court lies, nor can High Court call for a case to be  
stated.*

Under section 66(3) of the Income-tax Act the High Court can require the Income-tax Commissioner to state a case only if the conditions required by section 66(2) are made out, and one of those conditions is that an order under section 31, or 32, or 33A has been passed in the case.

The rejection of an appeal against an assessment on the ground that the appeal is barred by time is an order refusing to entertain the appeal and is not an order confirming the assessment, within the meaning of section 31 of the Income-tax Act; it, therefore, does not come under section 66(2) of the Act, and consequently section 66(3) does not apply; hence, the High Court can not require a case to be stated and referred to it.

Under section 30(2) the Assistant Commissioner, to whom an appeal has been preferred beyond time, is authorised to condone the delay; but where, on hearing the appellant, he is not satisfied that there was sufficient cause for the delay and refuses to admit the appeal, there is no appeal which has to be disposed of under section 31 and the Assistant Commissioner does not function under that section at all. The rejection of the appeal under section 30(2) as being barred by limitation can

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not be deemed to be an order confirming the assessment under section 31. An order confirming the assessment means an order which has reference to the assessment, which considers it and affirms it.

Mr. *Shabd Saran*, for the applicant.

The opposite party was not represented.

NIAMAT-ULLAH and BENNET, JJ.:—This is an application under section 66(3), Income-tax Act, for an order of this Court requiring the Income-tax Commissioner to state a case under section 66(2) of the same Act. The applicant was assessed to tax by the Income-tax Officer. He preferred an appeal to the Assistant Commissioner after more than thirty days from the date of the notice of demand. The Assistant Commissioner fixed a date calling upon the assessee to show cause why the appeal should not be rejected as one filed beyond time. On the date so fixed and after hearing the assessee the appeal was rejected. The assessee applied to the Income-tax Commissioner for revision of the order of the Assistant Commissioner. His application was dismissed. He then applied to the Income-tax Commissioner for statement of a case, under section 66(2). This application was also rejected. Thereupon he filed the present application.

It has already been held by this Bench in *Jotram Sher Singh v. Commissioner of Income-tax* (1) that the High Court can require the Income-tax Commissioner to state a case only if the conditions required by section 66(2) are made out and that one of those conditions is that an order under section 31 or section 32 or section 33A should have been passed in the case. It appears to us that no order under any of those sections was passed in the present instance. A reference to sections 30 and 31 of the Income-tax Act shows that an appeal is filed under the former section, and if it is admitted as an appeal presented in time, the appeal is ripe for hearing and a date is fixed for its disposal on the merits.

(1) (1934) I.L.R., 56 All., 933.

It is only after that stage that the Assistant Commissioner functions under section 31 and can dispose of the appeal by confirming, reducing, enhancing or annulling the assessment or setting aside the assessment and directing the Income-tax Officer to make a fresh assessment, etc. Section 30(2) prescribes the period of limitation for appeals, which according to that subsection should "ordinarily be presented within thirty days of receipt of notice of the demand relating to the assessment or penalty objected to or of the date of the refusal to make a fresh assessment under section 27, as the case may be". The Assistant Commissioner is, however, authorised to admit an appeal after the expiration of that period, if he is satisfied that the appellant had sufficient cause for not presenting it within that period. If the Assistant Commissioner is satisfied and admits the appeal, the order is one under section 30(2). If he is not satisfied that the appellant had sufficient cause, he refuses to admit the appeal, in which case no appeal can be registered and disposed of in the manner laid down by section 31 and no order under section 31 can be passed. It follows that action under section 66(2) cannot be taken if the appeal has not proceeded beyond the stage referred to in section 30(2), and the High Court cannot direct the Commissioner to state a case.

The learned advocate for the applicant contends that the Assistant Commissioner dismissed the appeal presented before him, though it may be that it was dismissed on the ground that it was barred by limitation. Accordingly, he argues that the order is one confirming the assessment within the meaning of section 31, Income-tax Act. We do not think that this contention is sound. An order confirming the assessment is an order which has reference to the assessment and which affirms it. Where the question of assessment is not even considered and the appeal is rejected as one barred by limitation, the order of dismissal cannot be consi-

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dered to be one confirming the assessment. As already stated, the order of the Assistant Commissioner in this case, properly described, is not an order dismissing the appeal but is an order refusing to entertain the appeal.

For the reasons stated above we hold that section 66(2) of the Income-tax Act does not apply, and the High Court cannot direct the Commissioner to state a case for the decision of the question of law said to arise from the order of the Assistant Commissioner. We express no opinion as to whether the question which the applicant desires to be considered by the High Court is a question of law.

The application is dismissed.

*Before Mr. Justice Niamat-ullah and Mr. Justice Bajpai*

PEAREY LAL (APPLICANT) v. AMNA KHATUN  
(OPPOSITE PARTY)\*

*Agra Tenancy Act (Local Act III of 1926), section 242(d)—“Amount of revenue payable” is in issue—Question of amount does not include question of liability to pay any revenue at all—Whether appeal lies to civil court—Jurisdiction.*

Clause (d) of section 242 of the Agra Tenancy Act is limited to cases in which the amount of the revenue payable is in dispute. Its language is not wide enough to include cases in which the liability to pay any revenue at all, as between two individuals, is the question in issue. Where the defendant totally repudiates his liability to pay any revenue, which he says is wholly payable by the plaintiff, he is not disputing the amount of the revenue payable by him, and clause (d) of section 242 does not apply and give appellate jurisdiction to the civil court.

Mr. Panna Lal, for the applicant.

Dr. N. P. Asthana, for the opposite party.

NIAMAT-ULLAH and BAJPAI, JJ.:—This is a reference by the Board of Revenue under section 267 of the Agra Tenancy Act. The facts as stated in the order of reference and as admitted before us by counsel on both sides are as follows. A certain mahal, or a portion thereof, was sold nearly a hundred years ago. One of

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