

1929.

MAHARAJA-
DHIRAJA
SIR
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THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

come up to Rs. 300. The award in the present case shows the apportionment between the Maharaja and some tenants with respect to the land acquired almost in the proportion of half and half. Therefore, what the appellant is entitled to would be half of this Rs. 300, namely Rs. 150. I think it would be a fair estimate if this compensation be awarded to the Maharaja to cover all items for the piece of land acquired. It must also be remembered that it is quite close to the station.

CHATTERJI,
J.

We allow the appeal to this extent and vary the decree of the Court below as indicated above.

Considering that the claim of the appellant was highly exaggerated, each party shall bear its own costs.

ADAMI, J.—I agree.

Decree varied.

REFERENCE UNDER THE INCOME-TAX ACT, 1922.

Before Kulwant Sahay and Fazl Ali, JJ.

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DAMODAR PRASAD

Feb., 19.

v.

COMMISSIONER OF INCOME-TAX.*

Income-tax Act, 1922 (Act XI of 1922), sections 30 and 66(2)—Income-tax Rules, rule 21—Appeal dismissed in limine—application for reference to High Court, scope of.

Where a memorandum of appeal to an Assistant Commissioner of Income-tax does not comply with the provisions of rule 21 of the Income-tax Rules the Assistant Commissioner is not bound to allow the appellant an opportunity to rectify the defects or mistakes in the memorandum.

*Miscellaneous Judicial Case no. 1 of 1929.

A memorandum of appeal which is not signed by the appellant and which is not verified by him is not in proper form and the Assistant Commissioner acts within his power in refusing to admit it.

When an appeal has been rejected in limine by the Assistant Commissioner the only question which the Commissioner can be asked to refer to the High Court under section 66(2) is whether, in law, the appeal was rightly so rejected.

The facts of the case material to this report were as follows :—

The assessee having filed a return of income a notice was served on him under section 22(4) directing him to file certain account books and original promissory notes and bonds. He filed only two of the account books and declined to produce the notes and bonds in original on the ground that they might be lost. A further notice under section 22(4) calling upon the assessee to produce all his account books and the notes and bonds in original not having been complied with, the Income-tax Officer made an assessment under section 23(4). The assessee then preferred an appeal to the Assistant Commissioner of Income-tax who declined to admit it, on the ground that the memorandum of appeal was neither signed nor verified by the appellant. The assessee then applied to the Commissioner of Income-tax to review the case under section 33 or to refer certain questions to the High Court. The questions on which a reference to the High Court was sought were: whether the Income-tax Officer was entitled to make an assessment under section 23(4) when the assessee had produced two of his books, and whether the assessee was bound to produce the originals of his notes and bonds. No question was formulated as to the legality of the action of the Assistant Commissioner in rejecting the appeal in limine. The Commissioner declined to make a reference to the High Court on the ground that the questions formulated by the assessee for reference to the High Court did not arise out of the

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appellate order and that the question as to the legality of the Assistant Commissioner's rejection of the appeal had not been formulated at all.

N. K. Prasad, for the assessee: As I had produced two of my books the Income-tax Officer could not again call on me to produce more books. Section 23(3) referred to. Failure to produce the notes and bonds in original did not justify action under section 23(4) as I was prepared to produce copies.

C. M. Agarwala, for the Commissioner of Income-tax: The assessee is not entitled to a reference on either question as neither arises out of the appellate order. Refers to section 66(2) and (3). An assessee is entitled under section 66(2) to a reference on a question of law only, and then only on a question which has been agitated before the appellate authority. When there has been no appeal there can be no reference. See section 66(2). The Income-tax Rules are statutory rules (refers to section 59), and, therefore, when the memorandum of appeal does not comply with the requirements of the rule 21, there is in fact no appeal. Furthermore, in this case the appeal was not admitted. Under section 66(3) the High Court can call for a reference only on a question of law on which the Commissioner has refused to make a reference under section 66(2). Therefore, when an application under section 66(2) must fail on the ground that there has been no appeal or on the ground that the question on which a reference is sought has not been agitated before the appellate tribunal, an application under section 66(3) must fail for the same reason. Even if the Commissioner could have made a reference on the question of the validity of the appeal he has not been asked to do so by the assessee and, therefore, he cannot be directed to do so by the High Court.

N. K. Prasad, in reply: The summary rejection of the appeal was illegal as I should have been given an opportunity of amending the memorandum. The Income-tax Act is silent with regard to amendments

and, therefore, the provision of the Code of Civil Procedure should have been applied.

KULWANT SAHAY AND FAZL ALI, JJ.—This is an application under section 66, clause (3), of the Income-tax Act for an order on the Commissioner to make a reference to this Court on certain points of law set out in the petition. It appears that the petitioner submitted his return under section 22 of the Act on the 23rd August, 1927. Thereupon a notice was issued by the Income-tax Officer under section 22, clause (4), of the Act directing him to produce certain account books. He produced two account books whereupon he was again ordered to produce certain other books and certain original promissory notes and bonds. The petitioner failed to comply with this requisition and thereupon the Income-tax Officer proceeded to make the assessment under section 23, clause (4).

The petitioner preferred an appeal to the Assistant Commissioner of Income-tax which was, however, not in proper form inasmuch as it did not comply with the provisions of rule 21 of the Income-tax Rules. The Assistant Commissioner passed the following order on the 2nd December, 1927 :

“ The petition of appeal does not bear the signature of the appellant and has not been verified in the prescribed manner. It is therefore not admitted. Inform petitioner by p. c.”

Thereupon he went to the Commissioner with an application to refer the case to this Court. The learned Commissioner has refused to do so on the ground that the only point of law which could arise out of the order of the 2nd December, 1927, was whether the Assistant Commissioner was entitled in law to reject the appeal in limine. The learned Commissioner says that this question was not formulated by the petitioner under section 66(2) of the Act, while the two questions which had been formulated by him did not arise out of the appellate order and, therefore, did not require any discussion. The

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learned Commissioner, however, did consider the point on the merits and was of opinion that no case had been made out for a reference to the High Court.

The petitioner has now come to this Court for an order upon the Commissioner to make the reference.

It is admitted before us that the petition of appeal before the Assistant Commissioner was not in proper form. Upon that admission it is clear that the Assistant Commissioner was right in refusing to admit the appeal. It is, however, contended that the effect of the order of the Assistant Commissioner was the rejection of the appeal and that the officer was not entitled to reject the appeal on account of certain defects in the form of the appeal and all that he could do was to call upon the petitioner to rectify the mistake in the memorandum of appeal. In my opinion there is no provision which requires the Assistant Commissioner to take this step, namely, to call upon the appellant to rectify mistakes in the memorandum of appeal. He did, however, inform the appellant by a post card that the appeal was not admitted on account of certain defects which were pointed out in the card. It was open to the appellant to approach the Assistant Commissioner with a prayer to allow him to rectify the mistakes and if he had done so there is no reason to suppose that the Assistant Commissioner would not have allowed him to do so. As has been pointed out by the learned Commissioner the only point of law which could arise out of the order of the 2nd December, 1927, was not taken before him, and, even assuming that the petitioner is entitled to take this point here in this Court, we are of opinion that the point is not a good point and cannot prevail. As regards the merits, it is clear that the matter not having been considered by the Assistant Commissioner it cannot be considered by us here in this Court. It, however, seems to be clear that it was open to the Income-tax Officer under

section 22, clause (4), of the Act to require the petitioner to produce such accounts or documents as the Income-tax Officer thought necessary, and section 23, clause(4), provides that if the requisition under section 22, clause (4), is not complied with the Income-tax Officer shall make the assessment to the best of his judgment. There was the requisition under section 22(4) which was not complied with, and therefore, the assessment made by the Income-tax Officer under section 23(4) appears to be legal.

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Application rejected.

APPELLATE CIVIL.

Before Das and Wort, JJ.

TATA IRON AND STEEL Co. LTD.,

v.

CHARLES JOSEPH SMITH.*

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22.

Security bond, executed by judgment-debtor for due performance of decree—whether can be enforced in execution—Transfer of Property Act, 1882 (Act IV of 1882), section 67—attachment, whether necessary condition—application to enforce security, where should be made.

Where an appellant judgment-debtor executes a mortgage bond as security for the due performance of the decree that may ultimately be passed by the appellate court, the bond is enforceable in execution proceedings, and the decree-holder may realize the properties given in security without attaching them or instituting a suit under section 67 of the Transfer of Property Act, 1882.

Held, further, that an application to enforce the security must be made to the court which passed the decree appealed from.

*Appeal from Original Order no. 9 of 1928, from an order of Babu Shivanandan Prasad, Subordinate Judge of Purnea, dated the 17th December, 1927.