1928

MOHAMED CASSIM v. A. J. DAVID

CUNLIFFE AND BAGULEY, JJ.

discretion is exercisable, should be used in favour of the appellant. We think it was argued in the Court below, but it has not been argued here, that some provision of the Limitation Act applies. We are quite certain that it does not apply in the circumstances of this case. Accordingly, the appeal will be dismissed with costs three gold mohurs in favour of the respondent.

APPELLATE CIVIL.

Before Mr. Justice Cunliffe and Mr. Justice Baguley.

1928

April 30.

A. K. A. C. T. V. CHETTYAR FIRM
v.
THE COMMISSIONER OF INCOME-TAX.*

Income-tax Act (XI of 1922), s. 66 (3)—*Application for* mandamus *on points of law different from those urged before Commissioner to state a case, effect of.*

Held, that where an assessee seeks for a *mandamus* from the High Court against the Commissioner of Income-tax requiring him to state a case on points of law different from those he had urged before the Commissioner to state a case, his application cannot be entertained.

Venkatram for the applicant.

A. Eggar (Government Advocate) for the Crown.

CUNLIFFE and BAGULEY, JJ.—This is an application on the part of the A. K. A. C. T. V. Chettyar firm of Wakema. It is made under section 66, sub-section (3), of the Indian Income-tax Act. The application seeks for a *mandamus* against the Commissioner of Income-tax requiring him to state a case on two points of law. The points of law are alleged to arise out of an assessment of the firm to income-tax, but, whatever merits they may have, it is our opinion that

* Civil Miscellaneous Application No. 22 of 1928.

we cannot consider them, for this very simple reason, that when the Commissioner was approached on the 13th of August 1927, he was asked to state a case based upon four (as far as we can see) quite different points of law. Two of these points have been jettisoned and for the two remaining points, the points before us have been substituted. It appears to us that the intention of the language of sub-section (3) of section 66 is perfectly clear. Sub-section (3) runs as follows :—

"If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may, within six months from the date on which he is served with notice of the refusal, apply to the High Court and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and on receipt of such requisition, the Commissioner shall state and refer the case accordingly".

It appears to us quite obvious that what is meant by the language of the section is that the Commissioner shall be required to state a case upon the points of law, or at any rate, one of the points of law which he was considering. If the assessee were permitted to shift his ground from a legal point of view without any check upon him, it appears to us that the whole of the consideration by the Commissioner before any application reaches this Court would be rendered abortive.

In these circumstances and on this preliminary point, this application must be dismissed, with costs five gold mohurs in favour of the Crown.