

MISCELLANEOUS CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

1926

Jan. 11.

BENARSI DAS, Petitioner

versus

COMMISSIONER OF INCOME-TAX, LAHORE,
Respondent

Civil Miscellaneous No. 543 of 1924.

Indian Income-tax Act, XI of 1922, sections 23 (4), 30 proviso, and 66 (2) and (3)—Assessee who has not complied with assessing officer's demand for accounts—not competent to move the High Court to require the Commissioner to state a case.

Where the assessee has failed to comply with the assessing officer's demand for accounts and the assessment is made under section 23 (4) of the Act, and the assessee has consequently no right of appeal, *vide* proviso to section 30—

Held, that the assessee, being debarred from making an application to the Commissioner under sub-section (2) of section 66, cannot move the High Court under sub-section (3) of the section to require the Commissioner to state a case.

Application under section 66 of the Income-tax Act, for issue of a mandamus to the Income-tax Commissioner, Lahore, to state the petitioner's case to the High Court.

MOTI SAGAR AND JAGAN NATH, AGGARWAL, for
Petitioner.

CARDEN-NOAD, Government Advocate, for Res-
pondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—The petitioner assessee applied to this Court for the issue of a *mandamus* to the Income-tax Commissioner to state a case.

The power of this Court in this class of proceed-

ing is defined in section 66 (3) of the Income-tax Act of 1922, and this Court may be moved under section 66 (3) only when the assessee is competent to apply to the Commissioner under section 66 (2).

Now the assessee in this case was debarred from making such application to the Commissioner, for the reason that he had failed to comply with the assessing officer's demand for accounts and consequently had no right of appeal.

For the foregoing reasons, we hold this petition to be incompetent and we dismiss it with costs.

A. N. C.

Application rejected.

MISCELLANEOUS CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

PUNJAB NATIONAL BANK, LIMITED,

Petitioner

versus

THE CROWN, Respondent.

Civil Miscellaneous No. 195 of 1924.

1926

Jan. 20.

Indian Income-tax Act, XI of 1922, section 10 (2), clause (ix)—Investment by a Bank in Government securities for use in emergency—Depreciation in value of—whether deductible from profits.

The petitioning Bank held high class Government securities for use in emergency and claimed that such investments were on the same footing as loans made to customers, and that depreciation in their value should be deducted in calculating the profits or gains of the Bank for the year under assessment. It was found that these securities were exhibited in the balance sheet as "investments", that their depreciation in value was only a potential or temporary loss, and that no actual expenditure in respect thereof had been made during the year in question.