

**MISCELLANEOUS CIVIL.**

---

*Before Mr. Justice Broadway and Mr. Justice Zafar Ali.*

DELHI CLOTH AND GENERAL MILLS CO.,  
LTD., Petitioner,  
*versus*

**1926**

*Dec. 18.*

COMMISSIONER OF INCOME- } Respondents.  
TAX AND ANOTHER, }

**Civil Miscellaneous No. 551 of 1926.**

*Indian Income-tax Act, XI of 1922 (as amended by Act XXIV of 1926), section 66-A (2)—Appeal to Privy Council—Certificate by High Court—Judicial Discretion—Point of Law—universal importance—Civil Procedure Code, Act V of 1908, section 109 (c)—principle of—applicable.*

A cloth manufacturing company in 1918 set aside Rs. 1,00,000 as a provision against bad debts but in 1922, on bringing that sum into account as profits, was assessed to income-tax in respect thereof, the company's objection that the amount, having accrued as profits in 1918, was not liable to tax in 1922, being over-ruled. A Division Bench of the High Court having, on a reference under section 66 of the Income-tax Act, upheld the assessment, the Company applied under section 66-A (2) of the Act (subsequently added by Act XXIV of 1926), for leave to appeal to His Majesty in Council.

*Held*, that inasmuch as a reference under section 66 of the Income-tax Act postulates the existence of a question of law, the intention of the legislature in adding section 66-A (which is in terms the same as section 109 (c) of the Code of Civil Procedure) was to allow the presentation of an appeal to His Majesty in Council only in cases in which the High Court could certify that the question of law involved was one of great private or public importance.

*And*, that the grant of that certificate was not a matter which was left entirely in the discretion of the Court, but a judicial process which could not be performed without special exercise of that discretion.

*Banarsi Prasad v. Kashi Krishna Narain* (1), followed.

1926

DELHI CLOTH  
AND GENERAL  
MILLS Co.  
v.  
COMMISSIONER  
OF INCOME-TAX.

*Held further*, therefore, that although it might be that in the present case the decision sought to be appealed against might affect the action or the position of other companies seeking to evade the payment of income-tax, the point of law involved was not of such universal or paramount importance as would warrant the grant of the certificate prayed for.

*Mritunjoy Praharaj v. Balmakand Kanungoe* (1), *Nattu Kesava Mudaliar v. Govindachariar* (2), and *Rajeswra Sethupathi v. Tirunelkantam* (3), referred to.

*Application for leave to appeal to His Majesty's Privy Council against the judgment of Mr. Justice LeRossignol and Mr. Justice Martineau, dated 6th January 1926.*

MEHR CHAND, MAHAJAN, for Petitioner.

Government Advocate, for Respondents.

The judgment of the Court was delivered by—

BROADWAY J.—This is an application for leave to appeal to His Majesty in Council. It purports to be made under sections 109 and 110 of the Civil Procedure Code, but really is an application under section 66-A, sub-clause (2), of Act XI of 1922, as amended by Act XXIV of 1926, which came into force on the 1st day of April 1926. The facts are, that a reference was made under section 66 of the Income-tax Act of 1922 by the Chief Commissioner of Delhi in connection with the assessment made on the Delhi Cloth and General Mills Company, Limited, Delhi. The Company had set aside a sum of Rs. 1,00,000 in the year 1918 as a provision against bad and doubtful debts. In the year 1922 this sum of Rs. 1,00,000 was brought into account and shown as profits. At the same time the Company contended that this amount was not assessable in the year 1922

(1) (1921) 61 I. C. 663. (2) (1923) 76 I. C. 811.

(3) (1922) 72 I. C. 250 (F.B.).

Inasmuch as the said sum of Rs. 1,00,000 had accrued as profit in the year 1918. It was held by a Division Bench of this Court, by a judgment dated the 6th January 1926, that the claim made by the company was erroneous and that the said sum of Rs. 1,00,000 had been rightly included in the profits for the year 1922 and correctly assessed to income-tax. It is against this judgment of the Division Bench of this Court that the Company desires a certificate for leave to appeal to His Majesty in Council.

Now, at the date when this decision was pronounced, the order of this Court was final and not open to appeal to the Privy Council. Act XXIV of 1926 added to the Income-tax Act of 1922, section 66-A, sub-clause (2) of which is to the following effect:—

“ 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 any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.”

This in terms is the same as section 109 (c) of the Civil Procedure Code. Inasmuch as a reference under section 66 of the Income-tax Act postulates the existence of a question of law, it is perfectly clear that the intention of the legislature in adding section 66-A to the Income-tax Act was to enable an appeal to His Majesty in Council in cases in which the High Court could certify that the question of law involved was one of great private or public importance. It has been laid down by their Lordships of the Judicial Committee that the grant of a certificate under section 109 (c), Civil Procedure Code, is not a matter

1926  
 DELHI CLOTH  
 AND GENERAL  
 MILLS Co.  
 v.  
 COMMISSIONER  
 OF  
 INCOME-TAX.

1926

DELHI CLOTH  
AND GENERAL  
MILLS Co.  
v.  
COMMISSIONER  
OF  
INCOME-TAX.

which is left entirely in the discretion of the Court but is a judicial process which could not be performed without special exercise of that discretion *vide Banarsi Prasad v. Kashi Krishna Narain* (1). In *Nattu Kesava Mudaliar v. Govindachariar and others* (2), a case decided by a Division Bench of the Madras High Court, it was pointed out that section 109 (c) of the Civil Procedure Code contemplates a class of cases in which there may be involved questions of public importance, or which may be important precedents governing numerous other cases, or in which, while the right in dispute is not expressly measurable in money, it is of great public or private importance. In another case decided by a Full Bench of the Madras High Court, namely, *Rajeswara Sethupathi v. Tiruneelkantam and another* (3), it was pointed out that where in a case the point in issue appears to be one of general importance, but not of sufficient importance to the proposed respondent to warrant putting him to the expense of an appeal to the Privy Council, leave to appeal should be refused. Again in *Mritunjoy Praharaj v. Balmokand Kanungoe* (4), a Division Bench of the Patna High Court held that it was not enough to entitle a High Court to grant special leave to appeal to His Majesty in Council under section 109 (c), Civil Procedure Code, that a decision upon the construction of a section of a Tenancy Act will affect incidentally the rights of those who have holdings or tenures subject to the Act.

It may be that in the present case the decision sought to be appealed against might affect the action or the position of other companies who sought to evade

(1) (1900) I. L. R. 23 All. 227 (P.C.). (3) (1922) 72 I. C. 250 (F.B.).  
(2) (1923) 76 I. C. 811. (4) (1921) 61 I. C. 663.

the payment of income-tax by adopting the method that was adopted by the present petitioner. We do not think, however, that the point of law which is involved in the present case is one of such universal or paramount importance as would warrant the grant of the certificate prayed for and we therefore dismiss this petition with costs.

We would note that the application, in this as well as in another case with which we are about to deal, was filed in a very incomplete condition. It was filed on the 26th April 1926 but was not ultimately put into proper form till the 22nd July 1926. As however the learned Government Advocate did not press the question of limitation we have refrained from expressing any opinion on the point.

*N. F. E.*

*Petition dismissed.*

1926

DELHI CLOTH  
AND GENERAL  
MILLS Co.  
v.  
COMMISSIONER  
OF  
INCOME-TAX.