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SHANKAR LAL v. THE CROWN.

TEK CHAND J.

in any way misled by this technical defect in the frame of charge. I, therefore, find no substance in the second contention and accordingly overrule it.

[*The remainder of the judgment is not required for the purpose of this report.*—ED.]

A. N. C.

Revision accepted in part.

PRIVY COUNCIL.

Before Lord Sinha, Lord Blanesburgh and Sir John Wallis.

1927

July 26.

DELHI CLOTH AND GENERAL MILLS CO., LTD. Petitioners

versus

INCOME-TAX COMMISSIONER, DELHI AND ANOTHER—Respondents.

Privy Council Special Appeal of 1927.

(Lahore High Court, Miscellaneous Cases Nos. 551, 552 of 1926.)

Indian Income-tax Act, XI of 1922 (as amended by Act XXIV of 1926), section 66A (2)—Case stated by Commissioner—Decision of High Court—Appeal to Privy Council—Competence of Appeal—Certificate.

The right of appeal to the Privy Council from a decision of the High Court upon a case stated under section 66 of the Indian Income-tax Act, 1922, is given by sub-section 2 of section 66A (added by Act XXIV of 1926) only in a case which the High Court certifies to be a fit one for such an appeal. The High Court is justified in refusing a certificate in a case which in its view does not raise any question of such importance as would warrant a certificate under section 109 (*c*) of the Code of Civil Procedure, 1908. It is not sufficient that the requirements of section 110 of that Code are satisfied.

No right of appeal arises where the decision of the High Court was before April 1, 1926, the date when Act XXIV of 1926 came into operation.

Special leave to appeal refused.

Colonial Sugar Refining Co. v. *Irving* (1), applied.

Judgment of the High Court (2), affirmed.

Petitions for special leave to appeal from two orders of the High Court (January 6 and 12, 1926) made upon two cases stated by the Commissioner of Income-tax under section 66, sub-section 2 of the Indian Income-tax Act, 1922 (Act XI of 1922), upon applications by the petitioners.

One petition related to an assessment, dated June 12, 1923, for income-tax for the year 1922-23, which assessment provided for the recovery of additional income-tax for the year 1921-22 by way of adjustment under section 19 of the Indian Income-tax Act, 1918. The petitioner's contention was that the adjustment was barred by section 34 of the Act of 1918.

The other petition related to an assessment, dated March 23, 1924, for the year 1923-24 so far as it included a sum of Rs. 1,00,000, which the petitioners had carried to their profit and loss account for the year 1922 from a reserve account created out of profits for the year 1918. The petitioners contended that the sum of Rs. 1,00,000 should have been assessed for the year in which it was received, and that the present assessment in respect of it was barred by section 34 and section 35, sub-section 1 of the Act of 1922.

The High Court (leRossignol and Martineau JJ.) had rejected the contentions of the petitioners upon the cases stated and affirmed the opinions of the Commissioner.

The petitioners applied to the High Court for leave to appeal to the Privy Council, but both applications were dismissed.

(1) 1905 A. C. 369. (2) (1927) I. L. R. 8 Lah. 269.

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The first of those applications related to the assessment of March 23, 1924. The learned Judges (Broadway and Zafar Ali JJ.) held that under section 66-A, sub-section 2 (added to the Income-tax Act, 1922, by Act XXIV of 1926) under which the application was made a certificate could be granted only in cases involving a question of law of great private or public importance. They were of opinion that the point of law involved was not of such universal or paramount importance as to warrant the granting of a certificate. The judgment is reported in I. L. R. 8 Lah. at p. 269.

The second application was rejected on the same ground, the High Court pointing out that owing to the change in legislation the question raised could hardly occur again.

Each of the petitions stated that the amount involved was Rs. 15,000 or thereabouts, and that questions of considerable importance arose.

1927, July 18, 19.—SIR GEORGE LOWNDES K. C. and E. B. RAIKES, for the petitioners.

DUNNE K. C. and KENWORTHY BROWN, for the respondents.

The judgment of their Lordships was delivered by—

LORD BLANESBURGH—These petitions are each of them for special leave to appeal from orders made by the High Court of Judicature at Lahore on references to that Court under section 66 (2) of the Indian Income-tax Act, 1922. In each case the sum in dispute exceeds Rs. 10,000. In each the order in question was made before the 1st April, 1926—that in the first of the two cases being of date the 12th January, 1926, and that in the second having been made on the

6th January, 1926. In each case, also, the High Court refused to certify that the case was a fit one for appeal to His Majesty in Council. With these facts for its foundation, an interesting argument was addressed to the Board upon the nature of the statutory appeal in such cases as these, and upon the question whether in the present instances there is any such appeal at all.

The learned Judges of the High Court were of opinion that the petitioners had a right of appeal to His Majesty in Council provided they could, in effect, bring their cases within the requirements of section 109 (*c*) of the Code of Civil Procedure, but not otherwise. They dealt with the applications for certificates on that footing, and they dismissed them. Hence the present petition.

At the hearing before the Board, the view of the High Court was resolutely challenged by the petitioners. It sufficed, it was contended, that the cases should fall within the requirements of section 110 of the Code: the petitioners' right of appeal was in no way conditional on compliance with the requirements of section 109 (*c*). The respondents, on the other hand, supported, as applied to the general case, the view of the High Court, but contended that, for the petitioners here, there was, for reasons which will appear in the sequel, no statutory right of appeal at all.

These rival contentions raise questions of great general importance. It has seemed to their Lordships to be convenient that they should definitely pronounce upon them.

The legislative history of the subject is a short one. No express provision for appeals to His Majesty

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in Council from orders of a High Court in India made upon references either under section 51 of the Indian Income-tax Act, 1918, or under section 66 of the Act of 1922, is to be found in either statute, but until the case of *Tata Iron and Steel Co.* v. *Chief Revenue Authority, Bombay* (1), was decided by the Board, it was apparently generally supposed in India that appeals from such orders were regulated by sections 109 and 110 of the Code of Civil Procedure, to which reference has already been made. The effect of the judgment in the case cited was, however, definitely to lay it down that from these orders there was, in fact, no statutory right of appeal at all. And such was the position until the 1st April, 1926, when the Indian Income-tax (Amendment) Act, 1926, came into force, by section 8 of which it is provided that immediately after section 66 of the Indian Income-tax Act, 1922, a section should be inserted, of which it is convenient to transcribe the first three sub-sections :—

"66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

(2) 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 Majecty Council.

(1) (1923) I. L. R. 47 Bom. 724: L. R. 50 I. A. 212.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court."

It is upon these sub-sections that the question now under discussion depends, and as to them it will be noticed that the appeal thereby given is by sub-section 2 confined to a case which the High Court certifies " to be a fit one for appeal to His Majesty in Council." These words are textually the same as the concluding words of sub-section (*c*) of section 109 of the Code of Civil Procedure, and, coupled with the carefully limited referential words to the Code of Civil Procedure in sub-section 3, suffice, in their Lordships' judgment, to exclude from any right of appeal cases which fall within the requirements of section 110 of the Code, and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. It was conceded in argument that if sub-section 2 of the section had stood alone, it would be difficult to escape from the construction of it which has just been indicated. It was contended, however, that the reference to the Code in sub-section 3 was made in terms sufficiently comprehensive to include within the class of appealable cases all that are defined in the provisions incorporated by reference. Their Lordships cannot agree with this contention. The words of qualification, " so far as may be ", in sub-section 3 are, in their judgment, apt to confine the statutory right of appeal to the cases described in sub-section 2. To this extent, therefore, their Lordships are in agreement with the High Court.

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But a further point remains. Is there under this section any appeal at all from an order of the High Court made before the Act of 1926 came into force?

The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the *Colonial Sugar Refining Coy.* v. *Irving* (1), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect. On the contrary, they think there is a clear suggestion that a judgment of the High Court referred to in sub-section 2 is one which under sub-section (1) has been pronounced by "not less than two Judges of the High Court," a condition which was not itself operative until the entire section came into force.

In their Lordships' judgment, therefore, the petitioners in these cases have no statutory right of appeal to his Majesty in Council. Only by an exercise of the Prerogative is either appeal admissible.

(1) 1905 A. C. 369.

Both petitions their Lordships have, from this point of view, carefully considered. They have not forgotten that the circumstances are somewhat special: that the right of appeal introduced by the Act of 1926 is very probably conceded in order to rectify an omission inadvertently made from previous legislation, and is not one thought of for the first time. Even so, however, their Lordships are unable to find in the circumstances of either case sufficient ground for any exercise of the Prerogative in favour of the petitioners.

Their Lordships will accordingly humbly advise His Majesty that both petitions should be dismissed and with costs.

A. M. T.

Appeals dismissed.

Solicitors for petitioners: *T. L. Wilson & Co.*

Solicitor for respondents: *Solicitor, India Office.*

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Agha Haidar.

PUNJAB NATIONAL BANK, LTD., KASUR, (PLAINTIFF) Appellant

versus

UMADATT-HANS RAJ AND ANOTHER (DEFENDANTS) Respondents.

1927

Sept. 27.

Civil Appeal No. 1916 of 1923.

Civil Procedure Code, Act V of 1908, Order XLI, Rule 33—Second appeal—power of Court—where no appeal was made to the District Court—Amendment of plaint—when not permissible.

Plaintiff sued two defendants and prayed that his claim should be decreed against one or both. The trial Court decreed the suit against defendant No. 2. The latter appealed to the District Court but plaintiff neither appealed nor filed