

1939

LOKAMANYA
MILLS LTD.,
BARSÍ
v.
MUNICIPAL
BOROUGH
OF BARSÍ

On the merits in this case the real complaint is that the Sessions Judge has gone wrong in his law. But that is not a ground which would justify us in interfering in revision, in other than very special circumstances. It is a matter of appeal, and no appeal lies.

Beaumont C. J.

The application fails and must be dismissed with costs.

N. J. WADIA J. I agree.

Application dismissed.

Y. V. D.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice and Mr. Justice B. J. Wadia.

1939
April 14

THE CENTRAL TALKIES CIRCUIT OF MATUNGA, PETITIONER (ASSEESSE)
v. THE COMMISSIONER OF INCOME-TAX, OPPONENT.*

Income-tax Act (XI of 1922), s. 66 (3)—Application to direct Commissioner to state case—Costs of the application—Whether to follow the event—Practice.

The costs of an application under s. 66 (3) of the Income-tax Act to direct the Commissioner to state a case to the High Court ought in the absence of special circumstances to follow the event.

PRACTICE as to costs.

K. A. Somji, for the assessee.

M. C. Setalvad, Advocate General, for the Commissioner.

BEAUMONT C. J. This application raises a short point of practice relating to costs, and it is desirable that points of practice relating to costs should be settled one way or the other. The question which arises is this. The assessee asked the Commissioner of Income-tax to state a case under

*O. C. J. Civil Application No. 872 of 1938.

s. 66 (2) of the Income-tax Act, and the Commissioner took the view that no point of law arose and refused to state a case. Thereupon, the assessee applied to the Court under s. 66 (3), asking the Court to direct the Commissioner to state a case. The Court took the view that there was a point of law and that the Commissioner ought to state a case, and directed him to do so accordingly. The question is whether in those circumstances the costs of the application to state a case should follow the event, that is to say, be paid by the Commissioner who failed to establish his view that there was no point of law, or should be costs in the reference. We stood the matter over in order to ascertain whether there was any settled practice, but it appears that the point has not been considered, though there are some cases in which such costs have been made costs in the reference, but apparently without argument. We think that the right rule is that the costs should follow the event. The ultimate decision upon the point of law, whether for or against the Commissioner, can have no bearing on the question whether there was a point of law upon which a case should have been stated. We think that costs of an application to direct the Commissioner to state a case ought, in the absence of special circumstances, to follow the event.

We, therefore, direct the Commissioner to pay costs of the application on the Original Side scale, including costs of today.

Attorney for assessee : Messrs. *Motichand & Devidas*.

Attorney for the Commissioner : Mr. *H. F. Mulla*,
Solicitor to Central Government at Bombay.

Order accordingly.

N. K. A.