(1934) 05 AHC CK 0003

In the Allahabad High Court

Gurmukh Rai APPELLANT

Vs

Secretary of State RESPONDENT

Date of Decision : 04-05-1934

Acts Referred:
Income Tax Act, 1961 — Section 66(3)

Citation : AIR 1934 All 974

Judgement

1. This is an application for leave to appeal to His Majesty in Council from an order of the High Court dated 8th December 1933, dismissing an application filed by the applicant u/s 66, Sub-section (3), Income Tax Act, praying that the Commissioner be required to state the case and to refer it to the High Court. It appears that the applicant had applied to the Commissioner of Income Tax to review the proceedings u/s 33, Income Tax Act, and praying that if he did not feel inclined to interfere with the previous order he might refer to the High Court the question of law raised in the application; but the Commissioner passed an order dated 23rd January 1933 refusing to interfere and declined to refer the case.

2. A preliminary objection is taken that an appeal does not at all lie. We are of opinion that this objection has force.

3. Under Clause 30 of the Letters Patent of this High Court a right of appeal was given to the Privy Council in certain circumstances. But Clause 35 expressly provided that the provisions of the Letters Patent are subject to the legislative powers of the Governor-General in Council. The provisions of Clause 30 must therefore be deemed to have been superseded by Similar provisions contained in Sections 109 and 110, Civil P.C. u/s 109, an appeal lies from any decree or final order passed on appeal from any decree or final order passed in the exercise of original civil jurisdiction, and from any decree or order when certified to be a fit case for appeal subject to the condition laid down in Section 110. It was therefore necessary under the Code that there must be either a decree or final order or a decree or order certified to have been passed in a case fit for appeal.

4. In the case of Tata Iron & Steel Co. Ltd. v. Chief Revenue Authority, Bombey 1923 P.C. 148, their Lordships of the Privy Council laid down that the decision of a High Court upon a case stated and referred to the Court by the chief revenue authority u/s 51, Income Tax Act, 1918, was merely advisory, and therefore not a final judgment, decree, or order within the meaning of Clause 39 of the Letters Patent. The opinion expressed by the High Court on such a reference was stated to be only advisory made by the Court in the exercise of its consultative jurisdiction. The result was that no appeal could lie to their Lordships of the Privy Council from the opinion expressed by the High Court on a reference.

5. By the Income Tax Amendment Act of 1926, Section 66-A was specially added to Section 66 which, among other matters, contained a provision that an appeal shall lie to His Majesty from any judgment of the High Court delivered on "reference" made u/s 66, in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

6. In the case of Delhi Cloth and General Co. Ltd. Delhi v. Income Tax Commissioner Delhi 1927 P.C. 242, their Lordships of the Privy Council laid down that the right of appeal given by the new section was confined to a case which the High Court certifies to be a fit one for appeal to His Majesty in Council, and that the fact that these words were textually the same as the concluding words of Section 109(c) Civil P.C., coupled with the carefully limited referential words to the CPC in Sub-section (3), suffices, 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. Their Lordships did not agree with the contention that the reference to the CPC was made in terms sufficiently comprehensive to include within the class of appealable cases all that are defined in the provisions incorporated by reference. The words of qualification, "so far as may be" in Sub-section (3) are apt to confine the statutory right of appeal to the cases described in Sub-section (2), Section 66-A, Income Tax Act, It is clear therefore that the provisions under the CPC conferring a right of appeal must now be deemed to have been superseded by those contained in Section 66-A.

7. No doubt in the case of Feroz Shah v. Income Tax Commissioner Punjab & N.W.F. Province, Lahore 1933 P.C. 198, their Lordships, on an appeal from an order of the High Court refusing to require the Commissioner to state the case, went into the merits of the case; but their Lordships took care to stale that as the appeal failed on the merits, it became unnecessary for their Lordships to deal with the objection to its competence which was considered to be a serious one. That case therefore cannot be taken to be authority for the contention that an appeal lies.

8. Examining the words of Section 66-A(2), it is quite clear that the right of appeal is I restricted to cases of appeals from any I judgment of the High Court delivered on a (reference made u/s 66, in any case which the High Court certifies

to be a fit one for appeal to His Majesty in Council. Before the case can be certified to be a fit one for appeal it is necessary that that a must be a judgment of the High Court delivered on a reference made u/s 66. Now under Sin-section (1) and (2) of Section 66, the High Court has to deliver a judgment on the reference made to it. But so far as Sub-section (3) is concerned the High Court if not satisfied with the correctness of the Commissioner''s decision, can only require the Commissioner to state the case and refer to it. There is therefore no reference to the High Court so long as the Commissioner has not stated the case and referred it when required by the High Court. The stage of a reference accordingly does not arrive at all when the High Court declines to require the Commissioner to state the case and refer it. We must these fore hold that the order passed by the High Court declining to call upon the Commissioner to state the case and refer it, was not a judgment at all "on a reference" within the meaning of Section 66-A, Sub-section (2), so as to allow a right of appeal to His Majesty in Council. There is no other provision under which an appeal would lie. We are fortified in this view by the judgment of the learned Chief Justice of the Rangoon High Court in E.M. Chettiar Firm v. Commissioner of Income Tax 1930 Rang. 274, with whose conclusion we agree.

9. The dismissal of this application will of course in no way debar the applicant from applying to their Lordships of the Privy Council for special leave as Section 66-A, Sub-section (5) specifically preserves the full and unqualified exercise of His Majesty''s pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever.

10. The learned advocate for the respondent urges before us that even if an appeal had lain, the present applicant would be barred by time because it was filed more than 90 days from 8th December 1933. The learned advocate for the applicant urges that he is entitled to extension of time. His contention is that the time requisite for obtaining a copy of the order should be excluded u/s 12, Sub-section (2), Indian Limitation Act. It appears that the applicant applied for a copy of the judgment on 28th February 1934, and obtained it on 8th March 1934. The formal order prepared by this Court''s office was ready on 28th February 1934. The applicant''s counsel applied for copies of both the judgment and the decree. The copy of the judgment was delivered to him on 8th March 1934, and the copy of the decree on 22nd March 1934, as shown by the High Court Registrar. The applicant however has produced only the copy of the judgment and not the copy of the decree. u/s 12, Sub-section (2), Limitation Act, the applicant is entitled to the exclusion of the time requisite for obtaining a copy of the decree or order appealed from, but not of the whole time requisite for obtaining the copy of the judgment that was pronounced. Although there is a defect, we are satisfied that the time elapsed between the application for the copy of the decree and the date when the copy was given to him, if excluded, would make the present application within time.

11. We accordingly dismiss the application with costs on the ground that no

appeal lies; and we assess the cost of the Crown Counsel at Rs. 150. The necessary certificate of fee should be filed within one month.

