

(1928) 06 BOM CK 0009
In the Bombay High Court
Case No : Civil Application No. 1030 of 1927
In Re: Madhavdas Jethabhai

Date of Decision : 11-06-1928

Acts Referred:

Income Tax Act, 1961 — Section 66(3)
Specific Relief Act, 1877 — Section 45

Citation : AIR 1928 Bom 434 : (1928) 30 BOMLR 1114 : 113 Ind. Cas. 619

Hon'ble Judges : Mirza, J; Charles Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Charles Fawcett, Kt., A.C.J.

1. A preliminary objection has been taken, in this case, by the Advocate General that the application does not lie to the High Court on its appellate side in, the form in which the application has been brought under the provisions of Section 66 of the Indian Income Tax Act. The Advocate General has pointed out that Sub-section (3) of Section 66 is limited to a case of refusal by the Commissioner to state a case on a particular ground, viz., the ground that no question of law arises. If there is such a refusal, then Sub-section (3) enables an application to be made by the assessee to the High Court and the High Court to interfere, if it is satisfied of certain things.

2. Mr. Thakor for the applicant contends that Sub-section (3) should be read as covering a refusal on any other ground such as the one in which the Commissioner's refusal was based in this case, viz., that the application to him to refer to the High Court the question of law arising out of this order had been made beyond the time of one month prescribed by Sub-section (2). It seems to us impossible to construe Sub-section (3) in a way that would be directly contradictory to its express terms. The Legislature having chosen to limit Sub-section (3) to a case of refusal on the ground of any question of law arising, it would obviously be beyond our province to construe that section as covering a refusal on some other ground, especially as another remedy is open to the

applicant u/s 45 of the Specific Relief Act, as is shown, for in-stance, by the Privy Council case of Alcock, Ashdown & Co. v. Chief Revenue Authority, Bombay (1923) L.R. 50. IndAp 227: 25 Bom. L.R. 920. Our opinion is also re-enforced by a similar opinion expressed by the Calcutta High Court in Kumar Sarat Kumar Roy v. The Commissioner of Ineome-tax Bengal (1927) ITC. 279. We do not think that we can permit fie present application to be converted into an application u/s 45 of the Specific Relief Act, in view of the fact that Rule 536 of the Original Side Rules, 1922, as revised in 1926, requires the application to be entitled in a certain manner and to be made on motion in open Court before a Judge on the original side or a specially constituted bench But we direct that the affidavits that have been filed is this case may be used in support or in answer to any such application, The application is accordingly dismissed with costs. Costs to be as on the appellate side scale.