

(1925) 11 MAD CK 0024
In the Madras High Court

In Re: Sheik Abdul Kadir Marakayar and Co.

Date of Decision : 11-11-1925

Acts Referred:

Citation : AIR 1926 Mad 1051 : (1926) ILR (Mad) 725 : (1926) 24 LW 664 :
(1926) 51 MLJ 650

Judgement

1. By Section 66(1) of the Indian Income Tax Act, 1922, it is enacted

If, in the course of any assessment under this Act... a question of law arises, the Commissioner may, either on his own motion or on reference from

any Income Tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

and by Sub-section (2)

Within one month of the passing of an order u/s 31 or Section 32, the assessee, in respect of w,hom the order was passed, may, by application

accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of

law arising out of such order, and the Commissioner shall, within one month of the receipt of such application, draw up a statement of the case and

refer it with his own opinion thereon to the High Court.

2. There is a proviso with which we are not concerned enabling the assessee, if the final determination of the Commissioner u/s 33 is favourable to

him, to withdraw his application and get a refund of the fees that he paid. By Sub-section (3)

If, on any application being made under Sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises,

the assesaea may apply to the High Court and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require

the Commissioner to state a case and refer to it and, on receipt of any, such requisition, the Commissioner shall state and refer the case

accordingly.

3. It is clear that sub-sections (2) and (3) of Section 66 are in terms limited to orders passed under Sections 31 and 32. As to orders in review

passed by the Commissioner u/s 33 as in the present case there is nothing to operate upon except Section 66(1) and the assessee has no remedy

unless we hold that the Court has power to order the Commissioner to state a case embodying any point of law that may arise in the course of

proceedings u/s 33- The Privy Council has held in *Alcock, Ash-down and Co., Ltd. v. Chief Revenue Authority of Bombay* (1923) 45 M.L.J.

592 that the words of the older Act of 1918 import a mandate to the Commissioner to state a case where a real point of law arises, and has further

held that if he improperly declines to do so the Court may compel him under the general powers of the Specific Relief Act. It is conceded by Mr.

Patanjali Sastri that sub-sections (2) and (3) of Section 66 of the present Act only apply to orders under Sections 31 and 32; but he asks us to

draw the inference that the power of the High Court was meant to be confined to cases under those sections and was by implication taken away in

the case of orders u/s 33. The result would be that the Commissioner by calling up the records u/s 23 would be in a position to burke any further

enquiry whatever. We do not think that that can have been intended and we accordingly hold that the principle of *Alcock, Ashdown and Co., Ltd.*

v. Chief Revenue Authority of Bombay (1923) 45 M.L.J. 592 must be applied to orders u/s 33. It follows that the statute has set a period of

limitation on applications which relate to orders passed under Sections 31 and 32 and not on those which relate to orders passed u/s 33. The

answer appears to be that the jurisdiction conferred by Section 45 of the Specific Relief Act is discretionary and that in the case of unreasonable

and unexcused delay the Court would refuse to exercise it.

4. The Court therefore directs the Commissioner to state a case it not being seriously contended that there is not a substantial point of law

involved. Costs of this application reserved.