
(1926) 06 CAL CK 0006
In the Calcutta High Court

Kumar Sarat Kumar Roy

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-06-1926

Acts Referred:

Income Tax Act, 1961 — Section 33, 66(2), 66(3)
Specific Relief Act, 1877 — Section 45

Citation : AIR 1926 Cal 998 : 96 Ind. Cas. 702

Hon'ble Judges : Page, J;Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—This is a Rule on the Commissioner of Income Tax, Bengal, to show cause why he should not state a case for the opinion of the Court.

2. The facts appear to be these:

The applicant tiled certain returns relating to his income with a view to assessment of income tax before the Income Tax Officer at Rajshahi. That officer finally made an assessment. This was objected to by the assessee and lie appealed to the Assistant Commissioner. The appeal was decided on the 18th September, 1925. On the 9th December, the applicant filed an application for review u/s 33 of the Income Tax Act. He also prayed, in the alternative that the Commissioner would refer certain points of law to the High Court. The Commissioner rejected the application so far as it regarded the prayer for a reference of the case to the High Court on the ground that it was time barred. He, however, appears to have considered the case and refused to interfere in review. Mr. Rupendra, Mitter who has placed the case before us with his usual clearness and fairness does not press the point that the application to the Commissioner to refer the case was not time-barred. He, however, contends that the proceedings before the Commissioner in review u/s 33 were proceedings in connection with an assessment, that a serious point of law arose in those proceedings and that hence the Commissioner was bound to refer it to the High Court. He contends that the word "may" in Section 66(1) must be read as "must"

and hence that the Commissioner had no alternative but to refer the matter to the Court. In support of his contention he relies on the case of *Alcock Ashdown and Co. v. Chief Revenue Authority of Bombay* 75 Ind. Cas. 392 : 30 I.A. 227 : 47 B. 742 : 23 C.W.N. 702 : 21 A.L.J. 689 : 25 Bom. L.R. 920 : (1923) M.W.N. 557 : AIR 1923 P.C. 138 : 33 M.L.T. 267 : 45 M.L.J. 592 : 18 L.W. 918 : 39 C.L.J. 302 (P.C.). No doubt in dealing with that case the Privy Council held that supposing there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the Court and that if he did not appreciate that there is such a serious point it is in the power of the Court, to control him and order him to state a case. It may be noted here that this decision was u/s 51 of the old Act.

3. The present section is Section 66 which materially differs from Section 51 of the old Act. There was no provision in the old Act under which the Commissioner could be called on to state a case.

4. In Section 66(3) there is a specific provision that if the Commissioner refuses to state a case when called on to do so the Court may, require him to do so.

5. So far, however, as regards the refusal of the Commissioner to state a case is concerned this application to him to do so was refused on the ground that it was time-barred. It has not been contended here that, it was not so time-barred.

6. Therefore, so far as the provisions of Section 66(3) are concerned we think the Income, Tax Commissioner was right in refusing to state a case and we cannot interfere.

7. If he refused to state a case, on the ground that it was time-barred and admittedly it is time-barred the Court would have no reason to interfere, for Section 66(3) is limited, to cases where the Commissioner refuses to state a case on the ground that no point of law arose.

8. With regard to Mr. Mitter's contention that as in the proceedings in review before the Commissioner a serious point of law arose he was bound to refer it to the Court, the answer is that possibly in a properly constituted application u/s 45 of the Specific Relief Act, the Court might order the Commissioner "to state a case." No such application is before us and the income tax Act itself makes no provision by which in such a case we could compel the Commissioner to state a case. The case of *Alcock, Ashdown and Co. v. Chief Revenue Authority of Bombay* 75 Ind. Cas. 392 : 30 I.A. 227 : 47 B. 742 : 23 C.W.N. 702 : 21 A.L.J. 689 : 25 Bom. L.R. 920 : (1923) M.W.N. 557 : AIR 1923 P.C. 138 : 33 M.L.T. 267 : 45 M.L.J. 592 : 18 L.W. 918 : 39 C.L.J. 302 (P.C.) arose on an application u/s 45 of the Specific Relief Act. There is no such application before us, the present application being u/s 66 of the Income Tax Act. The result is that the Rule must be discharged with costs, four gold mohurs.

Page, J.

9. I agree that the Rule should be discharged, and that the present case is free

from difficulty. But as some wider questions of principle were canvassed before us it is desirable, I think, that attention should be drawn to the present state of law in respect of appeals from assessments to income tax. In England an assessee who is aggrieved by the determination of the Commissioner as being erroneous on a point of law is entitled to require the Commissioner to state a case for the opinion of the High Court and from the decision of the High Court an appeal lies to the Court of Appeal, and thence to the House of Lords. In India, however, as appears from certain recent decisions, *Tata Iron and Steel Co. v. Chief Revenue Authority Bombay* 74 Ind. Cas. 469 : 50 I.A. 212 : 23 C.W.N. 307 : 21 A.L.J. 675 : 25 Bom. L.R. 908 : AIR 1923 P. 148 : (1925) M.W.N. 603 : 45 M.L.J. 295 : 18 L.W. 272 : 9 O. & A.L.R. 783 : 33 M.L.T. 301 : 47 B. 724 : 39 C.L.J. 16 (P.C.) *Alcock Ashdown and Co. v. Chief Revenue Authority of Bombay* 75 Ind. Cas. 392 : 30 I.A. 227 : 47 B. 742 : 23 C.W.N. 702 : 21 A.L.J. 689 : 25 Bom. L.R. 920 : (1923) M.W.N. 557 : AIR 1923 P.C. 138 : 33 M.L.T. 267 : 45 M.L.J. 592 : 18 L.W. 918 : 39 C.L.J. 302 (P.C.), *Probhat Chandra Barua Vs. Emperor*, and *Probhat Chandra Barua Vs. The King-Emperor*, an assessee is in a much less favourable position. In certain specified circumstances, no doubt, he may require the Commissioner of Income Tax to refer a question of law to the High Court u/s 66(2) of the Income Tax Act, and if the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court for an order compelling the Commissioner to state a case. As the law stands at present, however, there is no way in which an assessee is able to challenge the decision which the High Court has given on a reference. In this Court it is the practice that income tax references are normally heard by a Division Bench of two Judges. But there is no provision in the Income Tax Act or elsewhere to prevent such references being heard by a Single Judge. Indeed, if two Judges who compose the Bench differ in opinion under the provisions of Clause (36) of the Letters Patent, upon which recently I had occasion to advert in *Prafulla Kamini Roy v. Bhabani Nath Roy* 91 Ind. Cas. 897 : 52 C. 1018 : AIR 1926 Cal. 121, the judgment of the senior Judge is taken to be the decision of the High Court. And yet there is no appeal from the decision of the Division Bench either to the High Court under the Letters Patent or to the Judicial Committee of the Privy Council. Indeed, the learned Standing Counsel went to the length of contending that if the Commissioner refuses to state a case on any ground other than that no question of law arises out of the orders specified in Section 66(2), the High Court has no jurisdiction to entertain an application for an order, compelling the Commissioner to state a case. In that event the assessee will be utterly powerless to challenge the correctness of the assessment which the Revenue Authorities have made upon him. It is unnecessary for us in the present case to determine whether this contention of the learned Standing Counsel is well-founded or not. But it is not inopportune that the conditions which in India limit, the right-of, appeal from an assessment of income tax, as disclosed in the recent decisions to which I have referred, should be understood and appreciated.

10. In the present case the assessee obtained a Rule calling upon the Commissioner of Income Tax to show cause why he should not be ordered to refer the question of law arising out of an order passed by the Assistant Commissioner u/s 31 on the 18th September, 1925. The Court is moved to exercise the powers vested in it u/s 66(3) of the Income Tax Act (XI of 1922). The application of the assessee to the Commissioner to state, a case referring to the High Court the question of law was not preferred until the 9th December, 1925, and, therefore, was time-barred. It appears, however, that on the same date and in the same document the assessee also applied to the Commissioner for a review of the said order of the 18th December, 1925, u/s 33 of the Act. The Commissioner appears to have reviewed the order u/s 33. But he has failed to state a case referring to the High Court the question of law that arose therein, namely, whether income derived from certain sources which had been taken into account at the time of the Permanent Settlement was assessable to income tax. Now, it may well be, though in this case it is not necessary to decide, that in a proceeding duly instituted under the Specific Relief Act, the Court in its discretion might order the Commissioner to refer to the High Court this question of law which admittedly arose in the course of the review proceedings *Alcock, Ashdown and Co. v. Chief Revenue Authority of Bombay* 75 Ind. Cas. 392 : 30 I.A. 227 : 47 B. 742 : 23 C.W.N. 702 : 21 A.L.J. 689 : 25 Bom. L.R. 920 : (1923) M.W.N. 557 : AIR 1923 P.C. 138 : 3 M.L.T. 267 : 45 M.L.J. 592 : 18 L.W. 918 : 39 C.L.J. 302 (P.C.). But, in my opinion, the Court has no jurisdiction to pass such an order in the present Rule which has been passed upon Section 66(3) of the Income Tax Act.

11. The Rule, therefore, must be discharged.

12. Since the enactment of Section 8 of the Indian Income Tax (Amendment) Act (XXIV of 1926), which came into force after the Rule in this case was granted, some of the defects in the Act to which I have adverted have been rectified.