

The Delhi Cloth and General Mills Company, Limited - - - *Petitioners*

v.

The Income Tax Commissioner, Delhi, and another - - - *Respondents*

Same - - - - - *Petitioners*

v.

Same - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL UPON PETITIONS FOR SPECIAL LEAVE
TO APPEAL TO HIS MAJESTY IN COUNCIL. DELIVERED THE
26TH JULY, 1927.

Present at the Hearing :

LORD SINHA.

LORD BLANESBURGH.

SIR JOHN WALLIS.

[*Delivered by* LORD BLANESBURGH.]

These petitions are each of them for special leave to appeal from orders made by the High Court of Judicature at Lahore on references to that Court under Section 66 (2) of the Indian Income Tax Act, 1922. In each case the sum in dispute exceeds Rs. 10,000. In each the order in question was made before the 1st April, 1926—that in the first of the two cases being of date the 12th January, 1926, and that in the second having been made on the 6th January, 1926. In each case, also, the High Court refused to certify that the case was a fit one for appeal to His Majesty in Council. With these facts for its foundation, an interesting argument was addressed to the Board upon the nature of the statutory appeal in such cases as these, and upon the question whether in the present instances there is any such appeal at all.

The learned Judges of the High Court were of opinion that the petitioners had a right of appeal to His Majesty in Council provided they could, in effect, bring their cases within the requirements of Section 109 (c) of the Code of Civil Procedure, but not otherwise. They dealt with the applications for certificates on that footing, and they dismissed them. Hence the present petitions.

At the hearing before the Board, the view of the High

Court was resolutely challenged by the petitioners. It sufficed, it was contended, that the cases should fall within the requirements of Section 110 of the Code: the petitioners' right of appeal was in no way conditional on compliance with the requirements of Section 109 (c). The respondents, on the other hand, supported, as applied to the general case, the view of the High Court, but contended that, for the petitioners here, there was, for reasons which will appear in the sequel, no statutory right of appeal at all.

These rival contentions raise questions of great general importance. It has seemed to their Lordships to be convenient that they should definitely pronounce upon them.

The legislative history of the subject is a short one. No express provision for appeals to His Majesty in Council from orders of a High Court in India made upon references either under Section 51 of the Indian Income Tax Act, 1918, or under Section 66 of the Act of 1922, is to be found in either statute, but until the case of *Radhukrishna Ayyar v. Sundaraswamiar* (49 I.A. 211) was decided by the Board, it was apparently generally supposed in India that appeals from such orders were regulated by Sections 109 and 110 of the Code of Civil Procedure, to which reference has already been made. The effect of the judgment in the case cited was, however, definitely to lay it down that from these orders there was, in fact, no statutory right of appeal at all. And such was the position until the 1st April, 1926, when the Indian Income Tax (Amendment) Act, 1926, came into force, by Section 8 of which it is provided that immediately after Section 66 of the Indian Income Tax Act, 1922, a section should be inserted, of which it is convenient to transcribe the first three subsections :—

“ 66A. (1) When any case has been referred to the High Court under Section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of Section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

“(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under Section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

“(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court.”

It is upon these subsections that the question now under discussion depends, and as to them it will be noticed that the appeal thereby given is by Subsection 2 confined to a case which the High Court certifies “ to be a fit one for appeal to His Majesty in Council.” These words are textually the same as the concluding words of Subsection (c) of Section 109 of the Code of Civil Procedure, and, coupled with the carefully limited referential words to the Code of Civil Procedure in Subsection 3, suffice, 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. It was conceded in argument that if Subsection 2 of the section had stood alone, it would be difficult to escape from the construction of it which has just been indicated. It was contended, however, that the reference to the Code in Subsection 3 was made in terms sufficiently comprehensive to include within the class of appealable cases all that are defined in the provisions incorporated by reference. Their Lordships cannot agree with this contention. The words of qualification, "so far as may be," in Subsection 3 are, in their judgment, apt to confine the statutory right of appeal to the cases described in Subsection 2. To this extent, therefore, their Lordships are in agreement with the High Court.

But a further point remains. Is there under this section any appeal at all from an order of the High Court made before the Act of 1926 came into force?

The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the *Colonial Sugar Refining Company v. Irving* (1905, A.C. 369), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect. On the contrary, they think there is a clear suggestion that a judgment of the High Court referred to in Subsection 2 is one which under Subsection (1) has been pronounced by "not less than two Judges of the High Court," a condition which was not itself operative until the entire section came into force.

In their Lordships' judgment, therefore, the petitioners in these cases have no statutory right of appeal to His Majesty in Council. Only by an exercise of the Prerogative is either appeal admissible.

Both petitions their Lordships have, from this point of view, carefully considered. They have not forgotten that the circumstances are somewhat special: that the right of appeal introduced by the Act of 1926 is very probably conceded in order to rectify an omission inadvertently made from previous legislation, and is not one thought of for the first time. Even so, however, their Lordships are unable to find in the circumstances of either case sufficient ground for any exercise of the Prerogative in favour of the petitioners.

Their Lordships will accordingly humbly advise His Majesty that both petitions should be dismissed and with costs.

In the Privy Council.

THE DELHI CLOTH AND GENERAL MILLS
COMPANY, LIMITED,

v.

THE INCOME TAX COMMISSIONER, DELHI,
AND ANOTHER.

SAME

v.

SAME.

DELIVERED BY LORD BLANESBURGH.

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