MANU/BH/0153/1950

Equivalent Citation: AIR1951Pat29

IN THE HIGH COURT OF PATNA
FULL BENCH

Supreme Court Appeal No. 37 of 1950

Decided On: 21.12.1950

Appellants:**Tobacco Manufacturers (India) Ltd**
Vs.
Respondent:**The State**

Hon'ble Judges/Coram:
Shearer, Sarjoo Prasad and Rai, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: P.R. Das and S.N. Bhattacharya, Advs.

For Respondents/Defendant: Govt. Pleader for Govt. Adv. and Rajeshwari Prasad, Adv.

ORDER

Reuben, J.

1. This is an appln. for leave to appeal to the S. C. from a decision of this Ct. on a reference under Section 21 (3), Bihar Sales Tax Act, 1944 (Bihar Act VI [6] of 1944), hereafter referred to as the taxing Act.

2 . The period of assessment is 1-10-1944, to 31-3-1945. The accepted gross turnover of the assessee company petnr. during this period is Rs. 3,41,98,000. Deduction is claimed under Section 5, Sub-section (2), Clause (a) (v) of the taxing Act in respect of a turnover of Rs. 2,93,15,000. Under this clause, the turnover of the assessee is exempted from liability to pay tax to the extent that it is derived from

> "sales of goods which are shown to the satisfaction of the Comr. to have been despatched by, or on behalf of, the dealer to an address outside Bihar."

The exemption is claimed in respect of goods despatched by the assessee company to addresses outside Bihar in pursuance of an agreement between it & the Imperial Tobacco Company of India, Ltd. By this agreement, the assessee Company contracted to despatch the goods manufactured by it, on behalf of the Imperial Tobacco Company of India, Ltd. & in the name of that company, to destinations inside Bihar or out of Bihar according to the directions of that company, which on its side, agreed to pay to the assessee company by way of remuneration the full cost of manufacture plus 25 per cent of such cost.

3. The reference was first heard by my learned brother, Das & Sarjoo Prasad JJ. On a difference between them, it was referred to B. P. Sinha J., who while agreeing with Das J. & disagreeing with Sarjoo Prasad J. as to the correct interpretation of the relevant clause of the taxing Act, has on another line of reasoning arrived at the same conclusion as Sarjoo Prasad J. On the facts, all their Lordships are agreed that the

transactions between the two companies amount to sales, & that the sales were completed & the property in the goods had passed to the Imperial Tobacco Company of India, Ltd., before the despatch of the goods. Das J. considered that the taxing Act, in accordance with the accepted principle of- construing such Acts, must be interpreted strictly in favour of the subject & therefore, the physical despatch of the goods by the assessee was "despatch" by him within the meaning of the relevant clause of the taxing Act. In the opinion of Sarjoo Prasad J., Section 5, Sub-section (2), Clause (a) (v) has no application where the sale is complete before the despatch of the goods, & the title is no longer in the vendor. B. P. Sinha J. pointed out that Section 5, Sub-section (2), Clause (a) (v) lays stress on the Comr. being satisfied as to the despatch being by the dealer or otherwise. He held that the H. C. is bound to accept the finding of the Comr. that the goods were physically despatched by the assessee but the despatch was made by him on behalf of the vendee; in other words, the despatch must be held to be despatch by the vendee & therefore, not entitled to exemption from sales tax.

4. A preliminary point has been raised as to whether the reference to B. P. Sinha J. was competent & whether there is a lawful decision of this Ct. disposing of the reference under Section 21, Sub-section (3) of the taxing Act, in respect of which decision leave to appeal can be asked for. The provision for a reference to a. third Judge is contained in Clause 28, Letters Patent of this H. C. & Section 98, Civil P. C. Clause 28 relates to a difference of opinion arising in the exercise of the H. C.'s "original or appellate jurisdiction". Section 98 relates to a difference arising in appeal; under Sub-section (3) this section is subject to the provisions in the Letters Patent. In Birendra Kishor v. Secretary of State 48 Cal. 766 : A.I.R. (8) 1921 Cal. 262) for the purpose of deciding whether counsel should be instructed by Vakil or by Attorney, a reference made under a similar provision in Section 51, Income Tax Act, 1918 (VII [7] of 1918) was treated as relating to the civil appellate jurisdiction of the H. C. This view was not accepted by Rankin & Page JJ. in Emperor v. Probhat Chandra Barua 51 Cal. 504 : A. I. R. (11) 1924 Cal. 668), which related to a difference of opinion in a similar reference under the Income Tax Act, 1922 (XI [11] of 1922). Relying on Tata Iron & Steel Co., Ltd. v. Chief Revenue Authority, Bombay 50 I. A. 212 : A. I. R. (10) 1923 P. C. 148), their Lordships held that this was a case of special jurisdiction to which the Code of Civil Procedure is not applicable, an opinion with which I respectfully agree. They held, however, that it was covered by Clause 36, Letters Patent (corresponding to Clause 28, Letters Patent of this Ct.) & disposed of the reference accordingly. The attention of their Lordships does not appear to have been drawn to the words "hereby directed" in the opening sentence of Clause 36. With respect, I would observe that the provisions in this clause relate to a difference of opinion arising in the exercise of a function which is directed by the Letters Patent to be performed by the H. C. in the exercise of its original or appellate jurisdiction. There is nothing in the Letters Patent providing for the exercise of the jurisdiction in question, it being a jurisdiction that is vested in the H. C. by a special statute. These observations apply also to the present case & Clause 28, Letters Patent of this Ct.

5 . Recognition to the view which I have just expressed has been given by an amendment of the Income Tax Act, 1922, which was made in 1926. By this amendment, Section 66A was inserted providing, inter alia, for the procedure to be followed in the event of a differ-once of opinion between the Judges in the hearing of a reference under the Act.

6. In my opinion, neither Clause 28, Letters Patent nor Section 98, Civil P. C., has any application. There is no provision in the taxing Act similar to Section 66A,

Income Tax Act, 1922. This, however, creates no difficulty. There being no procedure provided by law, it was open to my Lord the Chief Justice to mould a convenient form of procedure, vide Smith v. Williams (1922) 1 K. B. 158: 91 L. J. K. B. 156), which was followed in Maharajadhiraja of Darbhanga v. Commissioner of Income Tax 9 Pat. 240 : A. I. R. (17) 1930 Pat. 81 S. B.). The preliminary objection, therefore, fails.

7. There is more substance in the further objection, also of a preliminary nature, that the appln. is not maintainable. In reply to the objection, it has been stressed by Mr. P. R. Das that the appln. is under Article 133, Const. Ind. which is wider in terms than the provision for appeal to the P. C. contained in the Letters Patent. It is pointed out that under Clause 31, Letters Patent an appeal lay from

> "any final Judgment, decree or order of the High Court at Patna made on appeal, and from any final Judgment, decree or order made in the exercise of original jurisdiction, etc.,"

whereas, under Article 133 an appeal lies from "any Judgment, decree or final order in a civil proceeding of a High Court". (The italics are mine). Sub-section (5) of Section 21 of the taxing Act provides that the H. C. on the hearing of a reference, shall "decide" the question of law referred & shall deliver its "Judgment", which it shall send to the Board of Revenue & the Board shall dispose of the case accordingly, it is contended, the decision of the H. C. in this case is, therefore, a Judgment & since under Article 133 it is not necessary that the Judgment in question must be final, Tata Iron & Steel Co Ltd. v. Chief Revenue Authority, Bombay (90 I. A. 212: A. I. R. (10) 1923 P. C. 148 supra), which was decided under the earlier law, has no application. In my opinion, that decision does not proceed merely on the fact that the "Judgment" sought to be appealed against was not final. That case related to an appeal from a decision of the Bombay H. C. upon a case stated by the Chief Revenue Authority under Section 51, Income Tax Act, 1918, the provisions of which were substantially the same as the provisions of the taxing Act. There, as here, it was provided that, on the hearing of the reference, the H. C. shall "decide" the question raised & shall deliver "Judgment" thereon containing the grounds on which the decision is founded, & shall send the Revenue Authority a copy of this "Judgment" under the seal of the Ct. & the signature of the Registrar, & the Revenue Authority shall dispose of the case accordingly. For an appeal to lie under Clause 36 (39?) (corresponding to Clause 31, Letters Patent of this Ct.) it was necessary that the decision of the H. C. should be either a "final Judgment", or "final decree", or a "final order". Their Lordships first considered whether it was a "final Judgment" & answered the question in the negative. They commenced with the definition of "final Judgment" given by Lord Selborne in Ex parte Moore, 1885-14 Q. B. D. 627, that nothing more is necessary than a proper litis contestatio & a final adjudication between the parties to it on the merits --a definition applicable to the decision before their Lordships. Apparently, however, they preferred the definition given by Lord Esher, (Lord Lindley & Bowen L. J. concurring), in Onslow v. Commissioners of Inland Revenue (1890) 25 Q. B. D. 465 : 59 L. J. Q. B. 556). That case concerned a decision of the Ct. of Exchequer on a reference under Section 19, Stamp Act, 1870 (34 & 35 Vict. C. 7). Under that Act the Ct. was empowered to assess any duty it might decide to be chargeable on the instrument in question, and to order a refund if it found an excess charge to have been made; in the event of decision confirming the assessment, the costs of the Comrs. were payable by the opposite party. The Ct. decided in favour of Comrs. & the question arose whether the decision of the Ct. was a "Judgment" or an "order" for the purposes of appeal. Lord Esher came to the conclusion that it was not a "Judgment," observing :

> "A 'Judgment, therefore, is a decision obtained in an action, & every other decision is an order."

Their Lordships of the Judicial Committee showed their acceptance of this definition by observing :

> "This decision clearly establishes that the decision & an order made by Ct. under Section 51 of the jurisdiction (sci) cannot be held to be a 'final Judgment' within the meaning of Clause 39, Letters Patent, since there is nothing to show an intention in the year 1862 to use those words in a sense more extended than their legal sense."

They marked their acceptance of Lord Esher's definition by adding :

> "It is evident from this case of Onslow v. Commissioners of Inland Revenue 1890-25 Q. B. D. 465 : 59 L. J. Q. B. 556), that the use of the words 'determine' & 'decide,' or the direction that money paid in excess is to be refunded or the awarding of costs against the unsuccessful party, are not things which distinguish a Judgment from an order where questions are referred to the Cts. by case stated.
>
> The word 'Judgment' is indeed popularly used in many different senses, as when one says a certain man is a man of sound Judgment, meaning that he is possessed of the intellectual faculty of deciding rightly on facts or circumstances, or where even in legal matters the expression of the opinion formed in a case by a judge who dissents from his colleagues is commonly called his Judgment, though it can have no effect whatever on the determination of the suit or action in which it is delivered."

8. It is true that their Lordships concluded by deciding that the decision was not a "final Judgment," but this was because they were considering whether the decision was covered by Clause 36, Letters Patent, & that clause speaks of a "final Judgment."

9. My view of what their Lordships found is supported by their discussion of the provision in Section 51, Income Tax Act, that the H. C. shall "decide" & shall "deliver Judgment" & C., at the end of which discussion they remark:

> "It would appear clear to their Lordships that the word 'Judgment' is not here used in its strict legal & proper sense.
>
> It is not an executive document directing something to be done or not to be done, but is merely the expression of the opinions of the majority of the judges who heard the case, together with a statement of the grounds upon which those opinions are based. It amounts only to a ruling that a certain deduction claimed by a tax payer to be allowed from the sum for which he has been already assessed to Income Tax is not permissible."

If the decision is only an expression of opinion it cannot be a Judgment.

10. In the course of considering whether the decision of the H. C. was a "final order" their Lordships referred to In re Knight and the Tabernacle Permanent Building Society (1892) 2 Q. B. 613 : 62 L. J. Q. B. 33) and Peter Johnson v. Glassgow Corporation, 1912 S. C. 300 & pointed out that in spite of the use of terms "decision" & "determination" the function of the Ct. may be merely advisory, even though the

opinion of the Ct. be binding on the functionary who states the case for decision & they ended up with a relevant citation from the Judgment of Lord Esher in the former case:

> " 'In the case of Ex parte County Council of Kent, 1891-1 Q. B. 725, where a statute provided that a case might be stated for the decision of the Ct. it was held that though the language might prima facie import that there has to be the equivalent of a Judgment or order, yet when the context was looked at it appeared that the jurisdiction of the Ct. appealed to was only consultative, & that there was nothing which amounted to a Judgment or order."

11. Again, because of the terms of Clause 30, Letters Patent, their Lordships concluded that the decision of the H. C. was not "final order" but it appears from their Judgment that in their opinion the decision was neither a "Judgment" nor an "order". To exclude the application of Article 133, however, it is sufficient that the decision is not a "final order".

12. The words which their Lordships were interpreting were "final Judgment, decree or order" occurring in the Letters Patent of the H. C. We are concerned here with the same words in the same juxtaposition: "Judgment, decree or final order", & I would interpret them similarly. The "Judgment" & the "decree" are no longer required to be "final" but that does not indicate that they are to be otherwise different in kind from the "Judgment" & the "decree" contemplated by the previous law. I am. strengthened in my opinion by Article 136, Const. Ind. providing for special leave to appeal from "any Judgment, decree, determination, sentence or order". The opinion expressed by the H. Cs. on a reference of the kind with which we are concerned would appear to be a "determination" within the meaning of this clause.

13. On the view I have taken, Article 133 has no application & it is not necessary to consider whether the proceeding in which that decision was given was a "civil proceeding" within the meaning of Article 133. It has been suggested that this term has been used in contradistinction to the term "criminal proceeding" in Article 134 which is not criminal. But Article 132 of the Constitution seems to contemplate that the H. C. may exercise jurisdiction in "other proceedings" besides "civil proceedings" & "criminal proceedings," & the special jurisdiction of the H. C. under the taxing Act may be one instance of such "other proceedings." In this respect Article 133 would not appear to be as wide as Clause 31, Letters Patent, which provides for appeals in regard to matters "not being of criminal jurisdiction."

14. Our attention has been drawn to the order of Agarwala C. J. & Nageshwar Prasad J. dated 9-3-1949, in granting leave to appeal in P. C. A. No. 71 of 1948. That was a case of an appeal against an order of this Ct. refusing to call upon the Board of Revenue to state a case under the Bihar Sales Tax Act, 1944. Their Lordships granted leave under Clause 31, Letters Patent, following a decision of a Full Bench of the Lahore H. C. the appeal in which case was dismissed on the merits by the Judicial Committee without deciding the "serious" question whether Clause 29, Letters Patent of the Lahore H. C. (corresponding to Clause 31, Letters Patent of this H.C) had any application. Feroze Shah v. The Commissioner of Income tax 12 Lah. 166: A. I. R. (18) 1931 Lah. 138 F. B.), Feroze Shah v. Commissioner of Income Tax, Punjab 14 Lah. 682: A.I.R. (20) 1933 P. C. 198). There is a considerable difference between an order refusing to call for a reference & a decision on a reference made, & the case of Tata Iron & Steel Co., Ltd. v. Chief Revenue Authority, Bombay 50 I. A. 212: A. I. R. (10) 1923 P. C. 148) is an authority that Clause 31, Letters Patent has no application

to the latter. The decision in F. C. A. No. 71 of 1948 is clearly distinguishable & Mr. P. R. Das has not pressed this appln. as one under the Letters Patent.

15. In view of the opinion I have expressed, it is unnecessary to consider the final contention of the learned Advocate General that, on the merits, the petn. should be dismissed. Prima facie, a certificate would appear to be justified where three Honourable Judges of this Ct. have expressed differing views & such a larger sum of money is involved.

Das, J.

16. I regret I am unable to agree with my learned brother as to the effect of the decision of their Lordships of the Judicial Committee in Tata Iron & Steel Co., Ltd. v. Chief Revenue Authority, Bombay 50 I. A. 212: A. I. R. (10) 1923 P. c. 148). No doubt, there are observations in the said Judgment, with particular reference to an English decision relating to the Stamp Act, 1870 (34 & 35 vict. C. 7), which seem to show that a Judgment is a decision obtained in an action, & every other decision is an order. But the decision itself was on the question whether the Judgment delivered by the H. C. on 28-2-1921, on a reference by case stated under Section 51, Income Tax Act, 1918, was a final Judgment within the moaning of Clause 39, Letters Patent of the Bombay H. C., corresponding to Clause 31, Letters Patent of the Patna. H. C. Lord Atkinson, who delivered the Judgment of their Lordships, thus propounded the question for decision of their Lordships :

> "In order, therefore, that the appeal in this case should be held to be competent, the decision & order of the H. C. under Section 51, Income Tax Act, must come within Clause 39, Letters Patent. It must be either a final Judgment or a final decree or a final order."

His Lordship then referred to Ex parte Moore, (1885) 14 Q. B. D. 627 at p. 632, where Lord Selborne laid down that to constitute an order a final Judgment, nothing more is necessary than that there should be a proper litis contestatio & a final adjudication between the parties to it on the merits. His Lordship then referred to Onslow v. Commissioner of Inland Revenue (1890) 25 Q. B. D. 465 : 59 L. J. Q. B. 556), which was a case under the Stamp Act, 1870. After referring to the observations of Cotton L. J., in Ex parte Chinery (1884) 12 Q. B D. 342 : 53 L. J. ch. 662) with which Bowen & Kay L. JJ., concurred, his Lordship quoted Lord Esher as saying that a Judgment is a decision obtained in an action, & every other decision is an order. But the decision which their Lordships of the Judicial Committee gave was thus expressed :

> "This decision clearly establishes that the decision & an order made by the Ct. under Section 51 of the jurisdiction (sic) cannot be hold to be a 'final Judgment' within the meaning of Clause 39, Letters Patent, since there is nothing to show an intention in the year 1862-to use those words in a sense more extended than, their legal sense."

The words "final Judgment" were put in quotation marks. Having decided that the decision-was not a final Judgment within the meaning of Clause 39, Letters Patent, their Lordships went-on to consider whether it was a final order within the meaning of that clause. The final decision of their Lordships was thus expressed :

> "It would appear to their Lordships that having regard to the authorities cited, & for the reasons-already stated, the decision, Judgment or order made

> by the Ct. under Section 51, Income Tax Act in this case, was merely advisory, & not in the proper & legal sense of the term final, & thus so far as these considerations are concerned that the appeal is incompetent."

It is significant to note the use of the word 'Judgment' in respect of the decision or order of the Ct. under Section 51, Income Tax Act. I think that it would be wrong to take the P. C. decision in a more extended sense than what their Lordships in express terms, stated the decision, to be. The observations in Onslow v. The-Commissioner of Inland Revenue (1890) 25 Q. B. D. 465 : 59 L. J. Q. B. 556) which dealt with a different statute, were referred to in order to fortify the decision of their Lordships that the order of the II. C. was merely advisory & not in the proper & legal sense of the term 'final.' It is to be observed that the statute under which the decision of the H. C., was given in this case itself speaks of the decision, as a 'Judgment.' In Onslow v. The Commissioner of Inland Revenue (1890) 25 Q. B. D. 465 : 59 L. J. Q. B. 556), the question whether the order of the Comrs. was a Judgment arose, not because the Stamp Act of 1870 used the word 'Judgment' in connection with the order of the Comrs., but because of Rule 15 of Order 58 of the Rules of the Supreme Court, 1883.

17. Article 133, Const. Ind. uses the word 'final' before the word 'order' only, & does not use the adjective 'final' in connection with 'Judgment' & 'decree.' The word 'Judgment' did not occur in Section 109 or Section 110, Civil P. C. The words used there were

> "any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction," "any decree or final order passed by a High Court in the exercise of original civil jurisdiction" and "any decree or order when the case is certified to be a fit one for appeal to His Majesty in Council."

In Clause 31, Letters Patent of the Patna H. C. the expression used is

> "any final Judgment, decree or order of the High Court of Judicature at Patna made on appeal, and any final Judgment, decree or order made in the exercise of original jurisdiction by the Judges of the said High Court, etc"

In my opinion, the scope of Article 133 of the Constitution is wider than the scope of Sections 109 & 110, Civil P. C., & Clause 31, Letters Patent; because it must be taken that the Constituent Assembly which made the Constitution, were aware of the previous state of the law, & advisedly dropped the word 'final' before the word "Judgment.'

18. There is, however, a still further question which arises in this connection, & that question is if the Judgment of the H. C. in a sales-tax matter is a Judgment in a civil proceeding (I have underlined (here italicised) the important words). It has been contended before us that the expression "civil proceeding" has been used in Article 133 in contra-distinction to the expression "criminal proceeding" used in Article 134. Our attention has not been drawn to any direct decision on this question. After we had heard arguments in this case, I find that there are certain general observations in a Judgment of the S. C. which have some bearing on the question. The decision is reported in the September issue of the All India Reporter, Pritam Singh v. The State A. I. R. (37) 1950 S. C. 169 : 51 Cr. L. J. 1270). Their Lordships were dealing with the case of an appeal by one Pritam Singh against the decision of the H. C. of Punjab at Simla, upholding his conviction on the charge of murder of one Buta Singh. His Lordship Fazl Ali J., who delivered the Judgment of the Ct. referred to the relevant

articles of the Constitution dealing with the appellate jurisdiction of the S. C. in the following words :

> "The relevant articles of the Constitution dealing with the appellate jurisdiction of the S. Ct. are Articles 132 to 136. Article 132 applies both to civil & criminal cases & under it an appeal shall lie to the S. Ct. from any Judgment, decree or final order of a H. Ct. whether in a civil, criminal or other proceeding, if the H. Ct. certifies that the case involves a substantial question of law as to the interpretation of the Constitution. Article 133 deals with the appellate jurisdiction of this Ct. in Civil matters only, & it has been drafted on the lines of Sections 109 & 110, Civil P. C., 1908. Article 134 constitutes the S. Ct. as a Ct., of criminal appeal in a limited class of cases only, & clearly implies that no appeal lies to it as a matter of course or right except in cases specified therein. Article 185 merely provides that the S. Ct. shall have jurisdiction & powers with respect to any matter to which the provisions of Article 133 or Article 134 do not apply, if the jurisdiction & powers in relation to that matter were exercisable by the F. C. immediately before the commencement of the Constitution under any existing law."

It is to be observed that Article 135 of the Constitution has reference to the Abolition of the Privy Council Jurisdiction Act, 1949, which came into force on 10-10-1949, & under which all the powers that were possessed by the Judicial Committee of the P. C. in regard to cases or matters arising in India became exercisable by the F. C. of India, whether those powers were exercisable by reason of statutory authority or under the prerogative of the King.

19. His Lordship then quoted Article 136 & summarised the position thus:

> "The points to be noted an regard to this article are firstly, that it is very general & is not confined merely to criminal cases, as is evident from the words 'appeal from any Judgment, decree, sentence or order' which occur therein & which obviously cover a wide range of matters; secondly, that the words used in this article are 'in any cause or matter', while those used in Articles 132 to 134 are 'civil, criminal or other proceeding', & thirdly, that while in Articles 132 to 134 reference is made to appeals from the H. Cs. under this article, an appeal will lie from any Ct. or tribunal in the territory of India."

His Lordship then stated that by authority of Article 136 the S. C. can grant special leave in civil cases, in criminal cases, in Income Tax cases, in cases which come up before different kinds of tribunals & in a variety of other cases. It is worthy of note that Income Tax cases are referred to separately from civil cases. The same point has been referred to again in the Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank MANU/SC/0030/1950). I must say that the question whether income tax cases, or for that matter, sales tax cases, are civil proceedings within the meaning of Article 133 of the Constitution, did not specifically arise for decision in Pritam Singh's case MANU/SC/0015/1950); but the observations made therein seem to imply that Income Tax cases or sales tax cases are not civil proceedings within the meaning of Article 133, Const. Ind. In F. C. App. No. 71 of 1948 leave was granted by a Division Bench of this Ct. in a Bihar Sales Tax case on the assumption that the proceeding was a civil proceeding. The matter, therefore, requires consideration by a larger Bench.

20. By the "Court.--We are agreed that, if Article 133, Const. Ind. applies, leave to

appeal should be granted under Clause (1) Sub-clause (o) of that Article. But, for the reasons which we 'have given above, we are not agreed whether the order of this Ct. against which the right of appeal is claimed, is or is not a Judgment within the meaning of Article 133. The further question if it was a civil proceeding within the meaning of that Article also requires consideration by a larger Bench in view of the Division Bench decision in F. C. App. No. 71 of 1948, regarding the correctness of which we entertain some doubt. In the circumstances, we submit the case to his Lordship the Chief Justice with the suggestion that it may be referred to a larger Bench for disposal.

Opinion of the Full Bench

Sarjoo Prasad, J.

21. This is an appln. for leave to appeal to the S. C. from a decision of this Ct. arising out of a reference under Section 21 (3), Bihar Sales Tax Act, 1944 (Bihar Act VI [6] of 1944).

22. The matter was at first placed for hearing before Reuben & Das JJ. Their Lordships were agreed that if Article 133, Const. Ind. applied leave to appeal should be granted under Clause (1) Sub-clause (c) of that Article. There was, however, a difference of opinion between them as to whether the order of this Court from which the right of appeal was claimed is or is not a "Judgment" within the meaning of Article 133. The further question which arose for consideration by them was whether the decision in question related to or was a decision in a "civil proceeding' under the said Article. On this point, they doubted the correctness of the decision of this Ct. in P. C. App. No. 71 of 1948 in which leave was granted by a Division Bench in a Bihar Sales Tax Act; case on the assumption that the proceeding was a civil proceeding. Reuben J. was of the view that the decision of this Cfc. against which the present appln. is directed was not a decision in a "civil proceeding' as contemplated by Article 133 of the Constitution Act. Das J. was inclined to the same view; but as both of their Lordships entertained doubt about the correctness of the aforesaid order in P. C. App. No. 71 of 1948 granting leave to appeal, they suggested that the matter should to referred for disposal to a larger Bench. Accordingly the matter has been placed before us.

23. Mr. P. R. Das appearing on behalf of the appct. has conceded that the appln. for leave to appeal in the present case does not fall under Sections 109 & 110, Civil P. C., because the decision in question is neither a decree nor a final order coming under any of the said provisions. He also concedes that he has no right of appeal under the Letters Patent of this Ct. He, how ever, contends & very strongly contends that he is entitled to appeal under Article 133, Constitution Act, & leave to appeal should, therefore, be granted to him.

24. Article 133, Const. Ind. provides that

> "an appeal shall lie to the Supreme Court from any Judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies (c) that the case is a fit one for appeal to the Supreme Court."

(I have omitted the irrelevant portions of the Article). It would, therefore, appear from the above that the two essential requisites of the Article in question are (1) that the appeal should be from any Judgment, decree or final order & (2) that the said Judgment, decree or final order must have been passed in a civil proceeding. It is,

therefore, to be determined whether these two requisites of the Article have been satisfied before the appct. can be held entitled to a right of appeal to the S. C. As I have stated above, Reuben J. was definitely of the view that the decision of this Ct. from which the appeal is sought to be preferred does not fulfil either of these requirements. Das J. on the contrary, was of the view that it was a Judgment & fulfils the first requirement but is doubtful in regard to the second requirement. His own view seems to be that it did not relate to a 'civil proceeding' though he felt some difficulty on account of the order of a Division Bench of this Ct. passed in P. C. App. No. 71 of 1948 following a F. B. decision of the Lahore H. C. in Feroze Shah v. Commissioner of Income Tax 12 Lah. 166: (A. I. R. 1931 Lab.. 138 P. B.). The net result is that both the learned Judges were of the opinion that the essential conditions of Article 133 were not fulfilled. The co-existence of the two requisites being essential as enjoined by Article 133, the appln. for leave to appeal should have been dismissed by their Lordships. The reference to this Bench, however, appears to have been necessitated merely because of the Division Bench order in F. C. App. No. 71 of 1948. Mr. P. R. Das for the appct. did not seriously press for our consideration the correctness of that order. He conceded that the said order had been passed at a time when the Constitution Act was not in force & he could not rely upon it in support of his present appln. for leave. My learned brother Reuben J. also observes that

> "the decision in P. C. App. No. 71 of 1948 is clearly distinguishable & Mr. P. B. Das has not pressed his appln. as one under the Letters Patent."

There was, therefore, no further point to be considered. It is necessary to mention in this context that the S. C. has since decided the appeal in which leave had been granted by this Ct. in P. C. App. No. 71 of 1948. I will have occasion to refer to this case at a later stage, but it may be sufficient to point out that the S. C. approved of the decision of this Ct. in Sri Harihar Gir v. Commissioner of Income Tax, B. & O., A. I. R. (28) 1941 Pat. 225 : (20 Pat. 561 S.B.) which refused to accept the view taken by the "F. B. of the Lahore H. C.

25. Mr. P. R. Das for the appct., however, argues that it should be held in disagreement with Reuben J. & in agreement with Das J. that the decision of this Ct. from which the appeal is sought to be preferred is a Judgment, & it should also be held in disagreement with both the learned Judges that the decision in question did arise out of a civil proceeding. As elaborate arguments have been advanced at the Bar, I will deal with both these arguments separately. I may, however, say at once that I feel no hesitation in agreeing with my learned brother Reuben J, as to his decision on both the points canvassed before us. In doing so, I find that whatever doubts I may have had in the beginning have been more than dispelled & dissipated not only by the decision of the Judicial Committee in Tata Iron and Steel Co. v. Chief Revenue Authority, Bombay 50 I. A. 212 : (A. I. R. 1923 P. C. 148) on which Reuben J. relies, but also, as I shall presently show by a number of other authoritative pronouncements in all of which the same meaning of the term "Judgment" has been consistently adopted. In order, however, to appreciate the legal aspect of the matter, it would be just as well to refer briefly to some of the salient facts giving rise to this appln. for leave.

26. At the instance of the appct. who is also the assessee, this Ct. called upon the Board of Revenue to state a case in regard to certain points formulated by this Ct. This was done under authority of Section 21 (3), Bihar Sales Tax Act, 1944 (Bihar Act VI [6] of 1944), the relevant taxing statute. The Board of Revenue accordingly made a reference to this Ct. on those points of law affecting the assessment of the appct.

during the period running from 1-10-1944 to 31-3-1945. The accepted gross turnover of the assessee during this period was Rs. 3,41,98,000. The petnr. claimed deduction under Section 5, Sub-section (2), Clause (a) (v) of the taxing Act in respect of a turnover of Rs. 2,93,15,000. This clause provides that the assessee is exempted from liability to pay sales tax on turnover derived from

> "the sales of goods which are shown to the satisfaction of the Comr. to have been despatched by, or on behalf of, the dealer to an address outside Bihar."

The exemption was claimed in respect of goods despatched by the assessee Company to an; address outside Bihar though the sale itself had been completed in this province.

27. This reference under Section 21 (3) of the taxing statute was first heard by my learned brother Das J. & myself, & as there was a difference of opinion between us in regard to this deduction claimed by the assessee, it was referred to my learned brother B. P. Sinha J. who by another line of reasoning arrived at the same conclusion as myself. On the facts we were all agreed that the transactions amounted to sales, & that the sales were completed & the property in the-goods had passed to the vendee before the despatch of the goods outside the province. Das J. considered that the physical despatch of the goods by the assessee was all that was contemplated by the relevant clause of the taxing Act, &, therefore, the assessee was entitled to the deduction; whereas my own view was that the sale having been completed in this province before the despatch of the goods, & the title being no longer in the vendor, the exemption clause could not operate to the benefit of the assessee inasmuch as the taxing statute operated on all sales of goods in the Province. In my opinion, the exemption clause applied only with reference to sales of goods which were despatched by the dealer to an address outside the province, & in which the dealer retained a title in the goods before he despatched them. B. P. Sinha J. held that the clause laid stress on the comr. being satisfied as to despatch being by the dealer or otherwise, & the H. C. was bound to accept the finding of the Comr. on the point that the despatch was on behalf of the vendee. Thus the ultimate effect of these decisions was that all the points on which the Board of Revenue had been called upon to state a case under Section 21 (3) of the Act were answered against the petnr. It is against this-decision of the Ct. that the petnr. has presented the above appln. for leave to appeal to the-S.C.

28. Mr. P. R. Das argues that the decision given by this Ct. under Section 21 (5) of the taxing statute is a Judgment inasmuch as that subsection itself provides that the H. C. on the hearing of a reference "shall decide the question of law" referred to & "shall deliver its Judgment" which it shall send to the Board of Revenue "& the Board shall dispose of the case accordingly." Mr. Das, therefore, urges that this decision of the Court being a Judgment as provided by Section 21 (5) of the taxing statute, it must be held to be appealable under Article 133, Constitution Act which does not speak of any final Judgment but of "any Judgment, decree or final order." Here he contrasts the language of Clause 31, Letters Patent, which speaks of "any final Judgment, decree or order of the High Court." According to the learned counsel, a Judgment in order to be appealable need not be a 'final Judgment,' & even if it is of an interlocutory character, it would still be appealable as the right of appeal appears to have been enlarged under Article 133, Constitution Act, by dropping the word 'final' before 'Judgment.' He also points out that the word 'final' has been used in that article with reference to an 'order' but not with reference to a 'Judgment,' & from this he submits that it was never intended that the Judgment from which the petnr. has a

right of appeal must necessarily be in the nature of a final Judgment.

29. In order to understand the import of the term 'Judgment' Reuben J. relied upon a decision of the P. C. in Tata Iron & Steel Company v. Chief Revenue Authority, Bombay (50 I. A. 212: A.I.R 1923 P. C. 148) (supra). The decision, in consonance with old English precedents, adopts the meaning of the term 'Judgment' which in legal phraseology has been all along attributed to it. I do not propose to encumber my discussion of the subject with long quotations from the aforesaid decision specially when the case has been succinctly analysed by my learned brother Reuben J. But I cannot help referring to a passage from the Judgment of Lord Esher which the P. C. has quoted with approval and which has been so often quoted in Indian decisions. The passage runs as follows :

> "In the same case Bowen L. J. says there is an inherent distinction between Judgments and orders, & that the words 'final Judgment' have a professional meaning, by which expression I think he meant to say, as Cotton L. J. had previously said, that a 'Judgment' is a decision obtained in an action; and if that was his meaning, both these learned Lords Justices gave Judgment to the same effect, and Fry L. J. agreed with him. A 'Judgment', therefore, is a decision obtained in an action, and every other decision is an order.....That is, in my opinion, a proper distinction....."

Following the above distinction the Privy Council held :

> "This decision clearly establishes that the decision and an order made by the Court under Section 51 of the jurisdiction (sic) cannot be held to be a 'final Judgment' within the meaning of Clause 39, Letters Patent, since there is nothing to show an intention in the year 1862 to use those words in a sense more extended than their legal sense."

30. I may observe in the context that Clause 39, Letters Patent under consideration by the P. C corresponds to Clause 81, Letters Patent of this Court. Their Lordships further pointed out the danger of confusing the meaning of the expression 'Judgment' in a popular or loose sense with the 'professional' or legal sense of the term. I will quote their own words :

> "The word 'Judgment' is indeed popularly used in many different "senses, as when one says a certain man is a man of sound Judgment, meaning that he is possessed of the intellectual faculty of deciding rightly on fact or circumstances, or where even in legal matters the expression of the opinion formed in a case by a judge who dissents from his colleagues is commonly called his Judgment, though it can have no effect whatever on the determination of the suit or action in which it is delivered."

Therefore, the use of the term 'Judgment' or 'final Judgment' in the eye of law does not bear any different significance, and the use of the word 'final' as qualifying 'Judgment' is merely ex cautela. It is in this orthodox and juristic sense that the term 'Judgment' appears to have been used in Sections 205 & 206, Government of India Act, 1935 or for the matter of that in Articles 132, 133 and 134 of the present Constitution of India.

31. Mr. P. R. Das, however, seeks to distinguish the above decision of the P. C. in Tata Iron & Steel Co. (50 I. A. 212 : A. I. R. 1923 P. C. 148) (supra) in two ways. He contends in the first place that the decision is based upon the language of Clause 39,

Letters Patent, which used the expression 'final Judgment'. If I may say so, this was the main point of distinction pressed by Mr. Das which found favour with the other learned Judge. The other point of distinction was sought to be evolved by the learned counsel out of a suggestion which fell from one of us in course of his reply to the arguments of the learned Govt. Pleader. The point is that under the Income Tax Act, 1918, there was no power in the H. C. to call upon the taxing authorities to state a case & that, therefore, the H. C. in deciding the points of law referred to it by the revenue authorities acted merely in an advisory capacity. It is for this reason that it was suggested that the Judgment pronounced by the H. C. was not a Judgment in the real sense of the term & the observations of the Judicial Committee should be confined only to that contest.

32. It is true that under the law of Income Tax in India as it now stands or for the matter of that under Section 21 (3), Bihar Sales Tax Act, the H. C. is also empowered to call for a reference from the Revenue Authorities. This ' is what was done in the present case; but this factor to my mind does not improve the position & does not lend any additional finality to the Judgment which the H. C. comes to pronounce on the hearing of the reference. Whether the Revenue authorities state a case to the H. C. on certain points of law arising out of their Judgment or the H. C. calls upon them to state a case on such points of law, in either event the H. C. after the hearing of the case shall "deliver its Judgment" & "shall send to the Board of Revenue a copy of such Judgment" & "the Board shall dispose of the case accordingly." The position was exactly the same under Section 51, Income Tax Act, 1918 which came in for consideration by the P. C. If, therefore, the H. C. was then held to be acting in advisory capacity in delivering its Judgment, the capacity of the H. C. is not altered when acting under Section 21 (5), Bihar Sales Tax Act, 1944. That the aforesaid change in the law has not affected the function of the H. C. in delivering its 'Judgment' on such references is clear from another decision of the Judicial Committee in Bajendra Narayan Bhanj Deo v. Commissioner of Income Tax, B. & O. MANU/PR/0033/1940). In that case the H. C. had called for a reference under Section 66 (3), Income Tax Act, from the Re-venue-authority & answered the points of law against the assessee who obtained special leave to appeal from the Judgment of the H. C. The Judicial Committee, while disposing of the appeal, observed :

> "The function of the H. C. in cases referred to it under 8. 66 of the Act is advisory only & is confined to considering & answering the actual question referred to it."

33. This is exactly the function under Section 21 (5), Sales Tax Act which says : "The High Court upon the hearing of any such case shall decide the question of law raised thereby ..." (Italics are mine).

34. In my opinion, there is no substance at all in this ground of distinction.

35. The other point of distinction, namely, that the decision in Tata Iron and Steel Co. (50 I. A. 212 : A.I.R. 1923 P. C. 148) (supra) being based only upon the language of Clause 39, Letters Patent, can have no application to a case where the right of appeal is claimed under Article 133, Constitution Act, is equally without merit. True it is that the right of appeal in that case was claimed under Clause 39, Letters Patent where the expression 'final Judgment' occurs but the decision proceeds not so much upon the language of Clause 39 as upon the language of Section 51, Income Tax Act, which uses the word 'Judgment' & which is very similar to Section 21 (5), Sales Tax Act.

36. The question which the Judicial Committee posed for consideration was

> "what is the nature & character of the acts which Section 51, Income Tax Act, authorizes & empowers the H. C. to do."
>
> It then proceeds to analyse the various provisions of Section 51, Income Tax Act, which under Sub-section (3) provides 'that on the hearing of the case the High Court shall 'decide' the questions raised thereby, and shall 'deliver Judgment' thereon containing the grounds on which the decision is founded and shall send to the Revenue-authority a copy of this Judgment under the seal of the Court and the signature of the Registrar, and the Revenue-authority shall dispose of the case accordingly ".

In view of this provision the P. C. observed as follows :

> "This last provision merely means that the Revenue Officer in proceeding with the work in the course of which he was engaged when the question referred arose, shall be guided by the decision given, & shall make his assessment accordingly -the ultimate result being that he assesses the taxpayer at an amount which in his instructed opinion he Judges to be right. The decision of the H. C. does not in any way enforce the discharge of that liability. It would appear clear to their Lordships that the word 'Judgment' is not here used in its strict legal & proper sense."

37. At another place with reference to such a Judgment the Judicial Committee says :

> "It amounts only to a ruling that a certain deduction claimed by a taxpayer to be allowed from the sum for which he has been already assessed to Income Tax is not permissible."

and then the Judgment finally concludes with these pertinent observations :

> "It would appear to their Lordships that having regard to the authorities cited, & for the reasons already stated, the decision, Judgment or order made by the Ct. under Section 51, Income Tax Act in this case, was merely advisory, & not in the proper & legal sense of the term final, & thus so far as these considerations are concerned that the appeal is incompetent."

38. These observations apply with equal force to the language of Section 21 (5), Bihar Sales Tax Act, & it is perfectly clear from these observations that any Judgment which the H. C. pronounces in regard to the questions of law referred to it by the Revenue-authorities is not a Judgment in the technical sense of the term but merely a sort of opinion or advice; undoubtedly on those questions of reference the Revenue authorities are governed & they have to mould their order of assessment in the light of the advice so tendered by the H. C.

39. It is significant to note that in the decision in question the P. C. relied upon the observations of Lord Esher in the case of Onslow v. Commissioner of Inland Revenue (1890) 25 Q. B. D. 465 : (59 L. J. Q. B. 556) which arose under the Stamp Act, 1870 (34 & 35 vict. C. 7). Under Section 19 of the said Statute a person dissatisfied with the order of the Comrs. could appeal to the Ct. of Exchequer & require the Comrs. to state a case upon the points on which the opinion of the Ct. was required & the Comrs. were bound to do so. On the hearing of the case the Ct. had the power to determine the questions submitted, & if the instrument in question in the opinion of

the Ct. was chargeable with any duty, the Ct. could assess that duty. If, on the other hand, the Ct. decided that the Comr.'s assessment is erroneous, any excess of duty which may have been paid thereunder or any penalty in respect thereof could be ordered by the Ct. to be refunded to the applts. with costs incurred in relation to the appeal. Under Rule 15 of the Supreme Court Rules, the question arose whether such an order of the Ct. of Exchequer was a Judgment or an order, & I have already shown, it was held that the order in question was not a 'Judgment,' & therefore, special leave had to be obtained in order to enable the party to appeal within the meaning of the rule, Sections 56 to 59, Indian Stamp Act (II [2] of 1899) also provide for such references to the H. C. to be made by the Revenue-authority & the language of Section 59 also shows that the H. C. upon the hearing of any such case shall decide the question raised thereby & shall deliver its 'Judgment' thereon containing the grounds on which such decision is founded; & the Ct. shall then send a copy of such Judgment to the Revenue authority by which the case was stated, & the said authority shall dispose of the case conformable to such a 'Judgment.' Here also although the word 'Judgment' has been used, I do not know of any case where a party has been held entitled to prefer an appeal to the P. C. against a Judgment of this character. Nor, in my opinion, such an appeal could be entertainable, the Stamp Act itself not having provided for such a contingency, because a Judgment of such a nature is not a 'Judgment' in the real sense of the term although it has its finality in respect of the points which are stated to the Ct. for its decision.

40. The learned Govt. Pleader has further drawn our attention to the fact that Articles 132 & 133, Constitution Act, are very much on the same lines as Sections 205 & 206, Government of India Act, 1935. In Sections 205 & 206, Government of India Act the expression 'Judgment decree or final order' also occurs, & the decisions bearing on the interpretation of these sections of the Government of India Act a fortiori must have an important bearing upon the interpretation of Articles 132 & 133, Constitution Act. He points out that the language of Articles 132 & 133 in using the expression 'Judgment, decree or final order' is not altogether new, & it must be assumed that when the Const. Ind. was framed, the framers of the Constitution must have been conscious of the law as it then stood. Indeed, my learned brother Das J., has very rightly pointed out that

> "it must be taken that the Constituent Assembly which made the Constitution, were aware of the previous state of the law & advisedly dropped the word 'final' before the word "Judgment".

With great respect, I entirely endorse this view; but it appears that the attention of my learned brother was not drawn to the language of Sections 205 & 206, Government of India Act, 1935, & the various decisions bearing on the point which support the conclusion that the word 'Judgment' as used in the Government of India-Act was used in the technical sense as understood in the English precedents, namely, in the sense in which Lord Esher understood it & Lord Atkinson approved of it in the aforesaid decision of Tata Iron and Steel Co. (50 I. A. 212 : A. I. R. 1923 P. C. 148 (supra)).

41. I shall now refer to one or two cases on the point. The first is the decision in S. Kuppu-swami Rao v. The King MANU/FE/0001/1947). There the question arose on the interpretation of Section 205, Government of India Act, in connection with a criminal appeal in which the H. C. had granted a certificate for leave to appeal to the F. C., Kania, C. J., in dealing with the preliminary objection as to the maintainability of the appeal observed that in order to determine that the Ct. had jurisdiction under the

provisions of Section 205, it was necessary "to ascertain whether the appeal is really from Judgment, decree or final order of the H. C.". He then considered the question as to what was the meaning of 'Judgment, decree or final order of a High Court' within the meaning of the section, & following the decisions in various English & Indian precedents his Lordship held that it was not a final Judgment. His Lordship next proceeded to ascertain the meaning of the words 'Judgment & decree' & referred to the historic observations of Lord Esher M. R. in the case of Onslow v. Commissioners of Inland Revenue (1890 Q. B. D. 465 : 59 L. J. Q. B. 556) (supra). Then his Lordship observes :

> "These & other English decisions make it clear that in England when the word Judgment or decree is used, whether it is preliminary or final, it means the declaration or final determination of the rights of the parties in the matter brought before the Ct."

His Lordship further observes :

> "In our opinion, the decisions of the Cts. in India show that the word 'Judgment', as in England means the determination of the rights of the parties in the matter brought before the Ct.".

42. An argument was advanced before their Lordships, as it has been advanced before us, that Clause 39, Letters Patent of the H. Cts. of Calcutta, Bombay & Madras provided for appeals to His Majesty in Council from 'any final Judgment, decree or order', & it was urged that in the absence of the qualifying word, 'Judgment' in Section 205(1), Constitution Act, it must be held to include a preliminary or interlocutory Judgment, and that the order now under appeal fell under that category. His Lordship disposed of the argument thus :

> "We are unable to accede to this view. In our opinion, the term 'Judgment' itself indicates a judicial decision given on the merits of the dispute brought before the Ct."

43. It has been argued that this decision being a decision in a criminal case can be no guide to us in the interpretation of Article 133 of the Constitution Act. This contention does not appeal to me; nor did it appeal to their Lordships who said:

> "The words are used in Section 205(1), Constitution Act, & impart jurisdiction to the F. C. to entertain appeals both in civil & criminal matters. As the same words give jurisdiction to the Court in both classes of cases, it will be improper to construe them in a certain way when applicable to appeals in civil matters & give them a wider meaning when considered in connection with appeals from criminal proceedings. The words Judgment & final order, in connection with civil appeals, have received a definite judicial interpretation. In connection with civil appeals to this Ct. therefore, that interpretation has to be accepted. If so, the same interpretation has to be accepted in case of appeals from criminal proceedings brought to this Ct. under Section 205(1), Constitution Act."

44. The words Judgment, decree & final order' are common to both Articles 132 & 133 of the Constitution, & it cannot be doubted that Article 132 applies to all proceedings including 'civil' & 'criminal'.

45. To a similar effect is another decision of the F. C. in Mohammad Amin Brothers

Ltd., v. The Dominion of India A. I. R. 1950 F. C. 77 : (1949 F. C. R. 842). This appeal did not arise out of a criminal proceeding but was directed against an order of the H. C setting aside an order of another learned Judge of the same Ct. directing the compulsory winding up of the applt. Company. A preliminary objection was raised that the appeal was incompetent under Section 205(1), Government of India Act, 1935, under which the H. C. had granted a certificate. The question which, therefore, arose was if the decision of the H. C. appealed from did or did not amount to "a final order, Judgment or decree", B. K. Mukherjee J., who delivered the Judgment of the Ct. observed that all the relevant authorities bearing on the question had been reviewed by the Ct. in the recent pronouncement of Kuppuswami Rao v. The King MANU/FE/0001/1947) (supra), & the law on the point so far as that Ct. was concerned seemed to be well settled. His Lordship observed:

> "The fact that the order decides an important & even a vital issue is by itself not material. If the decision on issue puts an end to the suit, the order will undoubtedly be a final one, but if the suit is still left alive & has got to be tried in the ordinary way, no finality could attach to the order." I should observe that the effect of the H. C. order which was appealed against in that case was to keep the appln. for winding up on the file to be taken up for hearing after the final determination of certain income tax & excess profits tax cases which were then pending. It was lastly contended before their Lordships that although the order in question may not have the effect of a final order "it could still be regarded as a Judgment", & as such coming within the purview of Section 205, Government of India Act. This argument also did not find favour with their Lordships & they disposed of the same in the following words :
>
> > "In English Cts. the word 'Judgment' is used in the same sense as a 'decree' in the Civil P. C., & it means declaration or final determination of the rights of the parties in the matter brought before the Ct. vide, S. Kuppuswami Rao v. The King MANU/FE/0001/1947). According to the definition given in the Civil P. C., a Judgment is the statement of reasons given by a Judge on which a decree or order is based. If the order which is made in this case is an interlocutory order, the Judgment must necessarily be held to be an interlocutory Judgment & the collocation of the words 'Judgment, decree or final order' in Section 205(1), Government of India Act, makes it clear that no appeal is provided for against an interlocutory Judgment or order."

Mr. P. E. Das has frankly conceded that the Judgment in the present case was in the nature of an interlocutory Judgment, but he argued, as it was argued on behalf of the applt. before their Lordships, that it was nonetheless a 'Judgment' because it finally disposed of all the points of law referred to this Ct. by the Revenue-authorities. Having regard to these decisions, it is now too late to contend that a Judgment of the character with which we are concerned is a 'Judgment' within the meaning of Article 133, Constitution Act. I have no doubt that the term 'Judgment' in Article 133 has been used in the same sense as it was used in Section 205, Government of India Act, & the dropping of the word 'final' before the word 'Judgment' did not make any difference whatsoever.

46. It is, therefore, unnecessary for me to refer to several other decisions on which reliance has been placed by Mr. P. R. Das. There has been undoubtedly a great deal

of controversy over the meaning of the word 'Judgment' as used in the Letters Patent of the Indian H. Cs, The decision of Page C. J. in the F. B. case of In re Dayabhai Jiwandas v. Murugappa Chettiar 13 Rang. 457 : (A. I. R. 1935 Rang. 267 F.B.) is remarkably refreshing for its historic details, its originality of thinking & boldness & clarity of expression. In that case, after a close analysis of numerous authorities on the point, his Lordship fell back upon the meaning which was attached to the word in the English precedents & held that the word 'Judgment' in the Letters Patent meant a decree in a suit by which "the rights of the "parties at issue in a suit are determined". In 'doing so, his Lordship observed as follows :

> "Moreover, the view that we take of the meaning & effect of the term 'Judgment' in the Letters Patent is in consonance with the opinion that has been express-ed by the Judicial Committee of the Privy Council on no less than three occasions; &, I apprehend, it is not open to the Cts. in India to construe the term "Judgment as used in the Letters Patent in any other sense."

His Lordship then referred to the observations of Sir John Edge in Sevak Jeranchod Bhogilal" v. The Dakore Temple Committee MANU/PR/0013/1925 : 30 c. W. N. 459 : (A.I.R. 1925 P. C. 153) & the observations of Lord Atkinson in Tata Iron & Steel Company 50 I. A. 212 : (A. I. R. 1923 P. C. 148) (supra) which I have already discussed above. He also referred to another decision of the Judicial Committee in Sabitri Thakurain v. Savi 48 cal. 481 : (A. I. R. (1921 P. C. 80) and then summed up in these words :

> "It appears, therefore, that the Judicial Committee in three cases have expressly & plainly laid down that the term Judgment' in the Letters Patent of the H. C. means 'decree' & not 'order,' in the strict legal sense in which those terms are understood & defined."

Page C. J. has very rightly conceded that the construction which in the opinion of the Full Bench was placed upon the term 'Judgment' in the Letters Patent had not found, favour in other H. Cs. in India. But at the same time, in my opinion, his Lordship was justified in asserting that this was of no consequence, when he found ample support for his construction on the repeated pronouncements of the Judicial Committee based on English precedents as to the right & technical meaning of the word 'Judgment.' I am not here unmindful of the doubt expressed by Rankin C. J. in Brajagopal Boy v. Amar Chandra 56 Cal. 135 : A. I. R. 1929 cal 214 F. B.) as to whether for the purposes of interpreting Section 15 of the Letters Patent "the correct technical use of the word 'Judgment' in England is safe guide." Speaking for myself, with great respect, I do not see why it should not be so especially when the Judicial Committee itself in dealing with various cases on the point from Indian Cts. arising under the Letters Patent has repeatedly expressed itself in consonance with the English precedents. Instead of being tossed about on the waves of doubts & uncertainties in a vast sea of literature on the subject, I consider it safe to adhere to old & well-established moorings. The matter, as I have shown appears now to be concluded by the view taken in the F. C. decisions mentioned by me above pertaining to the construction of the very same expression 'Judgment-decree or final order' used in Section 205, Government of India Act of 1935.

47. Fortunately for us there is another very recent decision of the S. C. which has a direct bearing upon the interpretation of Section 21, Bihar Sales Tax Act, & the meaning of the word 'Judgment' as used in that Section. I refer to the decision of

Premchand Satramdas v. The State of Bihar, Supreme Court Appeal No. MANU/SC/0038/1950. I have already shown that the decision relates to the F. C. App. No. 71 of 1948 in which leave had been granted by this Ct. The assessee applt. in that case had applied to the H. C. for requiring the Board of Revenue to state a case but his appln. was Summarily rejected. He then applied for leave to appeal to the F. C. which the H. C. granted following the decision of a F. B. of the Lahore H. C. in Feroze Shah v. Income Tax Commissioner, Punjab & N. W. F. P. Lahore 12 Lab.. 166 : A.I.R. 1931 Lah. 138 F.B.) (supra). The said appeal from the Judgment of the Lahore H. C. was dismissed by the Privy Council on merits though the Privy Council did not decide the objection as to competency of the appeal which it characterised to be a serious objection. At the commencement of the hearing of the appeal before the S. C. a preliminary objection was raised that the appeal was not competent & their Lordships upheld the objection as well founded. In that connection their Lordships referred with approval to a Special Bench decision of this Ct. in Harihar Gir v, Commissioner of Income Tax, B. & O. A.I.R. 1941 Pat. 225 : 20 Pat. 561 S.B.) where it was held on an exhaustive review of various authorities that

> "no appeal lay to His Majesty in Council under Clause 31, Letters Patent of the Patna H. C. from an order of the H. C. dismissing an appln. under Section 66 (3), Income Tax Act (a. provision similar to Section 21 of the Act before us) to direct the Commissioner of Income Tax to state a case."

Their Lordships then proceeded to construe Section 21, Bihar Sales Tax Act, & held as follows:

> "All that the H. C. is required to do under Section 21, Bihar Sales Tax Act is to decide the question of law raised & send a copy of its Judgment to the Board of Revenue. The Board of Revenue then has to dispose of the case in the light of the Judgment of the H. C. It is true that the Board's order is based on what is stated by the H. C. to be the correct legal position but the fact remains that the order of the H. C. standing by itself does not affect the rights of the parties, & the final order in the matter is the order which is passed ultimately by the Board of Revenue. This question has been fully dealt with in Tata Iron & Steel Co. v. Chief Revenue Authority Bombay 50 I. A. 212 : A. I. R. 1923 P. C. 148) where Lord Atkinson pointed out that the order made by the H. C. was merely advisory & quoted the following observations of Lord Esher in In re Knight & the Tabernacle Permanent Building Society (1892) 2 Q. B. 613 : 62 L. J. Q. B. 33).
>
> In the case of Ex parte County Council of Kent, (1891-1 Q. B. 725) where a statute provided that a case might be stated for the decision of the Ct. it was held that though the language might prima facie Import that there has to be the equivalent of a Judgment or order, yet when the context was looked at it appeared that the jurisdiction of the Ct. appealed to was only consultative, & that there was nothing which amounted to a Judgment or order."

Their Lordships also held that the decision in question was not given by the H.C. in the exercise of either original or appellate jurisdiction because the H. C. acquired jurisdiction to deal with the case by virtue of an express provision of the Bihar Sales Tax Act, & they held that

> "the crux of the matter, therefore, is that the jurisdiction of the H. C. was only consultative & was neither original nor appellate."

Having regard to the categorical observations it is beyond any shadow of doubt that the Judgment of the H. C. pronounced on such references under the taxing statute cannot be called such a 'Judgment' as to give the appct. a right of appeal under Article 133, Constitution Act, Mr. P. E. Das further relied upon a decision in P. A. Raju Chettiar v. Commissioner of Income Tax, Madras MANU/TN/0279/1949 : (1949) 17 I. T. R. 353 (Mad.). This decision no doubt supports Mr. Das, but, in my opinion, the decision of the S. G. now puts the matter beyond the pale of controversy.

48. On the other question as to whether the decision from which the petnr. seeks to appeal to the S. C. arises out of a 'civil proceeding, both Reuben & Das JJ. seem to be in agreement that it did not, & the contention of Mr. P. E. Das that a 'civil proceeding' means & includes all proceedings except those that are criminal does not appear to have found favour with their Lordships. Indeed, as Reuben J. observed, Article 132 itself contemplates that the H. C. may exercise jurisdiction in 'other proceedings' besides 'civil proceedings' & 'criminal proceedings' & the special jurisdiction of the H. C. under the taxing Act may be one instance of such 'other proceedings.' Therefore, it follows that 'civil proceedings' cannot be held to include all proceedings save 'criminal proceedings.' The learned Govt. pleader has contended that proceedings under the taxing statutes stand entirely on a different footing inasmuch as the ruling authority in such cases proceeds to levy taxes in exercise of its sovereign rights; The proceeding, therefore, under the taxing statute cannot be regarded as a 'civil proceeding.' He relics upon a decision of the Judicial Committee of the P. C. in Raleigh investment Co., Ltd. v. Governor-General in Council A. I. R. 1947 P. C. 78 : 74 I. A. 50 where it was pointed out that a jurisdiction to question the assessment of Income Tax otherwise than by use of the machinery expressly provided by the Act would appear to be inconsistent with the 'statutory obligation to pay-arising by virtue of the assessment. Their Lordships did not lend countenance to the claim of the assessee to question the assessment, in a Civil Ct. on the ground that the assessing, officer had taken into account an ultra vires, provision of the taxing statute. Their Lord ships observed that the Act contained the' machinery which enabled an assessee to effectively raise the question whether or not a particular provision of the Act bearing on the assessment made upon him is ultra vires, & the assessee should avail himself of that provision for getting redress against the order of assessment & could not institute a civil suit for the purpose. It may be that this decision may in some respects have to be considered in the light of the fundamental rights vouchsafed under the Constitution Act. But at any rate? it is quite clear from this decision that the proceedings under the taxing statutes are something quite different from 'civil proceedings'. Das J. if I may say so with respect, has very aptly referred in this context to the decisions-of the S. C. in Pritam Singh v. The State A. I. R. 1950 Section C. 169 : 51 Cr. L. J. 1270) & Bharat Bank Ltd. Delhi v. Employees of the Bharat Bank MANU/SC/0030/1950 : 1950 S. C. E. 459), which also support the same inference. The provisions of Article 136, Constitution Act, indicate that the S. C. can grant;, special leave in civil cases, in criminal cases,, in Income Tax cases, in cases which come up before different kinds of tribunals and in a. variety of other cases. I agree with Das J., therefore that the observations made in those cases seem to imply that Income Tax cases and sales tax cases are not 'civil proceedings' within' the meaning of the Constitution Act.

49. The result is that the application before us does not fulfil either of the two requirements of Article 133 of the Constitution Act. It may be that, as in the present Income Tax law a right of appeal has been specifically provided-for, the State Government or the Union of India may provide in the taxing statute itself dealing with the levy of sales tax for a right of appeal to the S. C., but so long as it is not done, a

right of appeal cannot be claimed as a matter of course ; and it is impossible for me-now to attach any different meaning to the-term 'Judgment', as used in Article 133, Constitution Act, than what has been attributed to it-consistently by the various authoritative pronouncements which I have discussed above. For these reasons, I hold that the petnr. has-no right of appeal to the S. C., and, therefore,, leave to appeal cannot be granted. The application fails and must be dismissed with costs, hearing fee five gold mohurs.

Rai, J.

50. I entirely agree with the Hon'ble Sarjoo Pd. J. I have nothing more to add.

Shearer, J.

50a. The marginal note to Article 133 of the Constitution is "appellate jurisdiction of S. C. in appeals from H. C. in regard to civil matters." This is very similar to the marginal note to Article 73, Australian Constitution Act, 1900, which is "appellate jurisdiction of H.C." Whereas, however, the opening words of Article 73, Australian Constitution Act, 1900, are

> "The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all Judgments, decrees, orders and sentences," the opening words of Article 133(1) are "an appeal shall lie to the Supreme Court from any Judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies."

It is thus clear that Article 133(1) of the Constitution confers, 'as Section 205, Government of India Act 1935, conferred, a general right of appeal. In England, where civil actions were until very recent times ordinarily tried with the aid of a jury, the word 'Judgment' does not mean & has never meant what it means in this country. A Judgment in England was & still is, the formal order drawn up at the conclusion of a trial embodying the decision of the Ct. To be more strictly accurate, it was originally the formal order drawn up at the conclusion of trials in the Common Law Cts. At the conclusion of trials in the Ct. of Chancery, the formal order was denominated a decree. When the first of the codes of Civil Procedure was enacted by the Indian legislature in 1859 the legislature chose to direct that the decisions of Civil Courts should be embodied in decrees & not in Judgments & it gave to the word 'Judgment' the meaning which it still has today. In consequence, under that Code & under each successive Code, appeals have lain from decrees or orders but not from Judgments. Why is it then that the word 'Judgment' appears along with 'decree' 'order' in Section 205, Government of India Act, 1935 & in Article 183(1) of the Constitution ? The answer is, I think, to be found in history. The Judicial Committee of the P. C. as it now exists, was constituted in 1844 & Section 1 of 7 & 8 vict, C. LXIX under which it was constituted, enacted :

> "That it shall be competent to Her Majesty, by any Order or Orders to be from time to time for that purpose made with the Advice of Her Privy Council, to provide for the Admission of any Appeal or Appeals to Her Majesty in Council from any Judgments, Sentences, Decrees, or Orders of any Ct. of Justice within any British Colony or possession abroad .... & it shall also be competent to Her Majesty, by any such Order or Orders as aforesaid, to make all such Provisions as to Her Majesty in Council shall seem meet for the instituting & prosecuting any such Appeals."

It will be observed that the words used by the Imperial Parliament in 1844 were used by it again in 1900 in enacting Section 73, Commonwealth of Australia Act & still again in 1935 in enacting Sections 205 & 206, Government of India Act except that in the latter Act the word "sentence" was for obvious reasons, omitted. There is no doubt, I think, that the words used in the statute of 1844 were used advisedly to embrace every kind of decision. There may in the British Empire, as it existed in 1844, have been colonies in which, the original settlers having carried the Common Law with them, the decisions of the Cts. were embodied in formal Judgments based on the writs with which the action was commenced or in the formal decrees in use in the Ct. of Chancery in England, but in India & in other colonies or dependencies this was certainly not so. That appears to me to be a strong reason for sup. posing that the word 'Judgment' was not used in Section 205, Government of India Act, 1935, on which Article 133(1) of the Constitution is based, in any narrow or technical or, as it has been called professional sense. In construing the words "any Judgment, decree or final order," which appear in both of them, there are in my opinion two assumptions which can reasonably & ought to be made. One is that the draftsman of the Government of India Act, 1935, perfectly well aware of the meaning which the word "Judgment" had in this country. The other is that, in using the words "Judgment", the draftsman was not using it as synonymous with the word "decree", but as can nothing something which was or might not be either a decree or a final order. It is impossible, & indeed absurd, to suppose that the words "Judgment" & "decree" were used in contradistinction to one another & as connoting a decision given, in the one case in the exercise of legal, & in the other in the exercise of equitable jurisdiction. That being so, it appears to me that the words "Judgment, decree or final order" must be read together as a single phrase compediously including every decision except a decision which is an order & is not a final but a preliminary or interlocutory order. It is important to notice that these words occurred not only in Section 205, Government of India Act, but also in the section immediately following. Now. Section 206 conferred on the Indian Legislature power to abolish the jurisdiction exercised by His Majesty in Council in civil appeals. If the word "Judgment" was intended to exclude & Judgment under Section 21 (5), Bihar Sales Tax Act, 1944, it would also have excluded a Judgment under Section 66A, Income Tax Act. In other words, while the Indian Legislature, in exercise of the power conferred on it by Section 206, Government of India Act, 1935, might have abolished the jurisdiction of His Majesty in Council in every other class of civil appeals, appeals against orders made by the H. C. on references under the Income Tax Act would still have lain: to the Judicial Committee, & in order to transfer such appeals to the F. C. an Act of the British Parliament amending Section 206, Government of India Act, 1935, would have been necessary. Such a situation could not possibly have been intended. That it was not intended is, I think, made quite clear when one considers the amendment made in Section 206, Government of India Act, 1935, by the India Provincial Constitution Order, 1947. The words "Judgment, decree or final order" were retained in the amended section. As, in 1947, the intention of His Majesty in Council in amending Section 206 was to enable the Dominion Legislature forthwith to abolish any right of appeal to the Judicial Committee, it is perfectly clear that the British Parliament & also the Govt. of India considered that the expression "Judgment, decree or final order" was wide enough to cover decisions of the H. G. on references under Section 66A, Income Tax Act, &, if it is wide enough to cover such decisions it must also cover decisions under Section 21 (5), Bihar Sales Tax Act, 1944.

51. In the course of the argument a large number of decisions were cited, but, as the question is one of first impression, these decisions are of no assistance, & it is, I

consider, unnecessary to refer to them. Indeed, while decisions as to the construction to be put on Section 208, Government of India Act, 1935, may be in point, any other decisions cited were not strictly relevant, & to place any reliance on them would be to be in danger of falling into the cardinal error of attempting to construe one document by reference to the manner in which another & possibly similar, but nevertheless, different document has been judicially interpreted. I ought, however, to refer to the decision of their Lordships of the Judicial Committee in Tata Iron & Steel Co. Ltd. v. Chief Revenue Authority Bombay 50 I. A. 312 : A. I. R. 1923 P. C. 148). The recent decision of the Supreme Court in Premchand Satramdas v. The State of Bihar, civil Appeal No. MANU/SC/0038/1950) on which much reliance was placed by the learned Govt. Pleader , merely affirmed the decision of their Lordships of the Judicial Committee. In considering the applicability of the decision in Tata Iron & Steel Co. Ltd., v. Chief Revenue Authority Bombay 50 I. A. 212 : A. I. R. 1923 P. C. 148) it is necessary to bear in mind what exactly happened in that case. An assessee to Income Tax, being dissatisfied with the assessment made on him, applied to the Chief Revenue Authority to state a case for the consideration of the H. C. The Chief Revenue Authority declined to do so, &, thereupon, the assessee applied under Section 45, Specific Belief Act, to the H. C. asking that a writ of mandamus should issue on the Chief Revenue Authority requiring him to do what he had declined to do. This appln. was successful, & in response to the writ which was issued, the Chief Revenue Authority stated a case. The decision of the H. C. was however, adverse to the assessee & the assessee then applied for & was granted leave to appeal to His Majesty in Council. The ground on which, apparently, leave was asked for & was granted was that the decision of the H. C. was "a final Judgment ..... made in the exercise of original jurisdiction". When the appeal came on for hearing, it was contended that no appeal lay & that leave ought not to have been granted by the H. C. The expression "final Judgment", which occurs in the Letters Patent, occurs also in the English Bankruptcy Act, & Lord Atkinson, who delivered the Judgment of their Lordships, strongly relied on interpretations which had been put on the expression in cases under the Bankruptcy Act. Under that Act a person, against whom a final Judgment had been obtained & who had omitted to pay the Judgment debt within a certain period after a notice had been served on him, was deemed to have committed an act of bankruptcy. In Ex Parte Chinery (1884) 12 Q. B. D. 342 : 53 L. J. ch. 662) the question that arose was whether or not a garnishee order absolute was a final Judgment & in Ex Parte Moore (1885) 14 Q. B. D. 627 the question that arose was whether a Judgment under which costs were awarded & under which also an enquiry had to be made as to damages was a final Judgment or merely a preliminary or an interlocutory Judgment. It was held that the latter was a final Judgment, whereas the former was not & Bowen L. J. observed in the earlier case that the provisions in the Bankruptcy Act defining acts of bankruptcy should be construed as strictly as if they had occurred in a section which was defining a misdemeanour, because the commission of an act of bankruptcy entailed a disability on the person who commits it. Lord Atkinson, in following these decisions & pointing out that, technically in English law, a Judgment was the decision obtained in an action & that any other decision was an order, did not explain why he considered it necessary to construe the language used in the Letters Patent with the same strictness as Bowen, L. J. had in a somewhat different case, thought desirable. The reason, however is, I venture to think, reasonably clear on general principle. In Sandback Charity Trustees v. North Staffordshire Railway Co. (1878) 3 Q. B. D. 1 : 47 L. J. Q. B. 10) Bramwell, L. J. observed :

> " An appeal does not exist in the nature of things, a right to appeal from any decision of any tribunal must be given by express enactment. "

In the British Commonwealth of Nations the Sovereign, as the head of the State is entitled, except in so far as He has parted with his prerogative right, to entertain appeals against any decision of any tribunal throughout His Dominions. His Majesty parts with this prerogative right either to entertain or to decline to entertain an appeal when any statute either expressly bars or expressly confers a right of appeal, the reason why, in such a case, the prerogative right is surrendered, being that His Majesty is an integral part of the legislature which has enacted the statute, & if assent to the statute is not, as in the case of Acts of the British Parliament, given by His Majesty himself, assent to it is given in His name. The Indian Income Tax Act, 1918, did not confer any right of appeal, nor, on the other hand, did it expressly bar an appeal. The appellant in Tata Iron & Steel Co., Ltd. v Chief Revenue Authority, Bombay 50 I. A. 212 : A. I. R.1923 P. C. 148) was, therefore, entitled to ask for leave to appeal to His Majesty in Council. In order to avoid the inconvenience which would be caused by requiring every suitor, who desired to appeal to His Majesty in Council, to apply for and obtain leave in London, His Majesty in Council has delegated to various tribunals in His Dominions the power to grant leave to appeal on His behalf. It was commonly said, but incorrectly, that a litigant in India had a right to appeal under the Letters Patent. In constitutional law, the real position in such a case, was that the H. C. had power to grant him leave to appeal. It necessarily followed that, when leave had been granted by a H. G. in India, the resp. in the appeal was entitled to contend in London that leave had been wrongly granted. In such a case the onus was on the applt, to show that, in granting him leave, the H. C. had not exceeded the power which had been delegated to it. That, in my opinion, was why their Lordships of the Judicial Committee took the words "final Judgment, decree or order" as having been used in the Letters Patent distributively & why also they construed each of them strictly. Although, as I have said, Lord Atkinson did not explain why he chose to interpret the Letters Patent in the manner in which he did, his observation in the earlier part of the Judgment that no general right of appeal, such as was conferred by the Judicature Act, 1873, existed strongly suggests that some such considerations weighed with him. Incidentally, it may be observed that the language used in the judicature Act, 1673, is not dissimilar to that used in Section 205, Government of India Act, 1935. In construing any Constitution Act, the Cts. are bound to give it a broad & liberal interpretation. For that reason, the words "Judgment", "decree" "order" in Article 133(1) are not to be construed distributively. Regard must be had to the cumulative effect of them, & the phrase " any Judgment, decree or final order " made in a civil proceeding must be regarded as a single compendious phrase, embracing every decision in a civil proceeding which is not a final but is merely a preliminary or an interlocutory order. It is in this manner that the very similar language used in Section 73, Commonwealth of Australia Act, 1900, appears to have been construed by the Cts. in Australia (see Quick & Garran on the Constitution of the Australian Commonwealth, p. 741). Apparently, in the Australian Cts., while the meaning of the individual words may be looked to in order to appreciate in effect of the whole it is the combined scope of the words to which regard is invariably had. If Article 133(1) of the Constitution is construed in this way, then, it appears to me that an appeal now lies against a decision of the H. C. given under Section 21 (5), Bihar Sales Tax Act, 1944. The decision is described in the Act itself as a Judgment. There is no reason to assume that an appeal does not lie merely because the Judgment is one given in exercise of a consultative or advisory jurisdiction. In Onslow v. Commissioners of Inland Revenue (1890) 25 Q. B. D. 465 : 59 L. J. Q. B. 556) a decision on which much reliance has been placed by the learned Govt. pleader, an appeal did lie against such a decision, the only question at issue being whether the decision of the Ct., against which an appeal was sought to be preferred, was a

Judgment or an order, the point being of importance as if the decision was a Judgment, an appeal lay, whereas, if it was an order, an appeal was barred by limitation. I said a moment ago that, in my opinion, no decisions were directly relevant except decisions under Section 205, Government of India Act, 1935. Both parties have relied on two such decisions of the F. C. Mohammad Amin Brothers Ltd. v. The Dominion of India A. I. R. 1950 P. C. 77 : 1949 F. C. R. 842) & Kuppuswami Rao v. The Governor General of India A.I.R. (36) 1949 F. C. 1: 49 Cr. L. J. 625) Mr. P. E. Das, for instance, says that a Judgment under Section 21 (5), Bihar Sales Tax Act, 1944, is, in the words of the learned Chief Justice of India, "a judicial decision given on the merits of the dispute brought before the Ct.". It is Mr. Das says, immaterial that, before an actual assessment can be made, the matter has to go back to the Income Tax Officer. What is material, Mr. Das contends, is that, in making the assessment, the Income Tax Officer is bound by the Judgment of the H. C. It is, I must confess, possible to isolate passages in each of the two Judgments as supporting the other point of view. It has, however, to be remembered that in both cases the order against which an appeal was sought to be preferred was, quite plainly, a preliminary or interlocutory order, & the question that really arose was whether or not, although it was a preliminary or an interlocutory order it might not also be regarded as a Judgment. While I feel some: difficulty in accepting the contention of Mr. P. R. Das that these decisions support his argument, I am also unable to take the view that they can be relied on by the learned Government Pleader as completely decisive.

52. The constitution, it appears to me, proceeds on the assumption that proceedings are either civil proceedings or criminal proceedings. In England proceedings arising out of references made after under fiscal statutes are governed by a special procedure & are heard by the King's Bench Division on the revenue side. Nevertheless, they are, I believe, regarded as civil proceedings. I am unable to regard the observation of Fazl Ali J. in Pritam Singh v. The State MANU/SC/0015/1950) that the S. C. can by virtue of Article 136, grant:

> "special leave in civil cases, in criminal cases, in in-come-tax cases, in cases which come up before different kinds of tribunals & in a variety of other cases."

as an authority for the proposition that a proceeding on a reference made under the Indian Income Tax Act or under the Bihar Sales Tax Act, 1944, is not a civil proceeding. His Lordship was there merely explaining the scope of the power conferred, on the S. C. to grant special leave to appeal. For the reasons already given, the British Parliament & the Govt. of India must have been of opinion that decisions of the H. C. on references made under the Income Tax Act were "civil cases" within the meaning of the expression as used in Section 206, Govt. of India Act, 1935, & it appears to me necessarily to follow that under Article 133 of the Constitution a proceeding arising out of such a reference is a civil proceeding. Reuben J. has drawn attention to the words "other proceeding" which appear in Article 132(1) & to the word "determination" which appears in Article 136(1) of the Constitution. These words appear to me to have been inserted pro major cautela. It is obviously desirable that, when any question as to the interpretation of the Constitution arises, a decision on that question should not have to be postponed because of any doubt arising as to whether the proceeding in which the question arose was neither a civil nor a criminal proceeding. Similarly, it is desirable that there should be no doubt as to power of the S. C. to grant special leave to appeal in any case whatsoever. It has to be remembered that the Constituent Assembly was

legislating not for today, nor for tomorrow, but for an indefinite future, & it presumably realised that at some time or other a question might be raised as to whether a proceeding was or was not a civil proceeding. More particularly, it may perhaps have considered that such a doubt might arise regarding proceedings in connection with one of the writs which the H. Cs. are empowered to issue under Article 226(1). In England, a doubt appears at one time to have arisen as to whether proceeding in quo warranto were civil proceedings, & Section 15, Supreme Court of Judicature Act, 1884, was, in consequence, enacted providing that they should be deemed to be civil proceedings, whether for purposes of appeal or otherwise. I have read & considered with the care which it deserves the Judgment which has been prepared by my learned brother Sarjoo Prasad J. The difference between us is a difference as to the method of interpretation to be employed. My learned brother adopts the method of interpretation which has been employed in construing the Letters Patent. The Letters Patent are, however, an instrument containing a delegation of power by His Majesty in Council to the H. Cs. in India, & in construing such an instrument, it is not merely reasonable but essential that a strict interpretation should be put on the expression "final Judgment made in exercise of original jurisdiction", which expression, taken as a whole, does not, in any case, readily import more than a decision in an action. The constitution of a great people is not to be interpreted in precisely the same manner as a power of attorney which can be cancelled or modified at will. More particularly is that so when the provision in it which is under examination, confers a right on every citizen. Article 133 confers a right of appeal to the highest tribunal in the land. A right of that kind must, in the nature of thing be as restricted right. The first part of the article imposes one restriction, namely, that the decision from which an appeal is sought to be brought is not a preliminary or an interlocutory order which is what the Federal Ct. held in the two passes already cited & the second part of the article imposes another restriction namely, as to the value of the subject-matter & the difficulty or importance of the point of law which arises. Construed in this broad and liberal manner, the petitioner has now a right of appeal which he did not have previously. When I am invited, as I have been by the learned Government Pleader to isolate as it were, the word "Judgment" & to give to it a meaning which in this country is an esoteric meaning, the origin & scope of which I did not myself appreciate until I consulted Seton on Judgments & Orders, I must decline to do so on the ground that the Constitution was not the result of a revolution but the outcome of an orderly progress towards self-government, that the S. C. is the heir of the F. C. & of the Judicial Committee, that in the Acts of the British Parliament constituting each of these great Tribunals & defining their jurisdiction the word "Judgment" was used as part of a comprehensive phrase which, in my opinion, admits of no such construction & that that comprehensive phrase has been adopted by the makers of the Indian Constitution. I would myself grant leave to appeal. But as each of my learned brother is of a contrary opinion, the appln. must be disposed of in the manner just stated by Sarjoo Prasad J.