

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

M. Shaw Wallace

(Rankin , C.J.)

27.04.1931

JUDGMENT

Rankin, C.J.

1. This is an application by the Commissioner of Income-tax, Bengal, for a certificate that the case is a fit one to be taken on appeal to His Majesty in Council under Section 66 (a), Income-tax Act, which involves the same considerations as are involved in Clause (c), Section 109, Civil P.C. The sum of money at stake upon which the tax is claimed is very large and I am satisfied that the question as to whether income-tax is claimable on this money is a very important question both from the point of view of the assesseees and from the point of view of the treasury. Prima facie I should have no difficulty in saying that this case is exactly of the type which is contemplated by Clause (c), Section 109, Civil P.C. and which comes under Clause (2), Section 66 (a), Income-tax Act. It is said however that in this case the application for a certificate has been brought out of time.

2. The facts are that the judgment was pronounced on 13th January 1931 and that the application for this certificate was filed in the office of the Court on 31st March 1931. This was filed together with a notice of motion served on the same day calling upon the assesseees to appear before this Court on 20th April. It ought to be explained that this Court usually takes applications of this character on Mondays and that, in the ordinary way, these applications are dealt with as listed motions, the papers being filed in the office first. The Easter vacation began in this Court on 3rd April and at the time, namely, the 31st March 1931 four clear days' notice requisite for a notice of motion would have taken the applicant into the vacation. The Court reopened on Tuesday the 14th April and, in the ordinary way, 20th April being a Monday would be the first day on which it was convenient for this Court to deal with this motion. For this reason, the notice of motion was given for that day.

3. Under the Income-tax Act, a copy of this Court's judgment has to be sent to the Commissioner under the seal of the Court. This was sent to the Commissioner in due course and was received

by him on 26th January 1931. If the period between 13th January and even 21st January be deducted under Section 12, Lim. Act, then the applicant is in time and he does not require us to make any order in his favour under Section 5, Lim. Act.

4. It appears to me, when one comes to look at the article in the Limitation Act applicable, that the case must be governed by Article 179 rather than by Article 181 and I think therefore that the date of the judgment in a case of this sort must be the date from which the time has to be counted. I also think that, under Section 12, a party in a case such as this is entitled to the time required to obtain a copy of the judgment. Nothing the Commissioner could have done would have given; him a copy of the judgment sooner than he got it, namely, on 26th January 1921. I am not of opinion therefore that the application is out of time.

5. It appears that, on 31st March, the applicant by his advocate applied to this Court asking for special leave to serve short notice of motion so that the matter might come on before the Easter vacation. It appeared to the Court that that would not have been a convenient course and para. 17 of the petition which has been filed on the part of the Commissioner sets out the facts. I am quite prepared, were it necessary, upon the strength of that paragraph to extend the time under Section 5, Lim. Act. In my judgment, a certificate must issue as asked for.

Pearson, J.

6. I agree.