

BOMBAY HIGH COURT

Sir Chinubhai Madhavlal Bart

Vs

The Commissioner of Income-Tax

(John Beaumont, Kt., C.J. Blackwell, J.)

23.03.1937

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an application to review the Assistant Taxing Master's order in relation to the costs of Civil Reference No. 11 of 1935, which was a reference to this Court made by the Commissioner of Income-tax: under Section 66(2) of the Indian Income-tax Act.

2. The order made on the reference was that the assessee should pay the costs of the Commissioner on the Original Side scale. In taxing the costs, the Assistant Taxing Master has allowed a fee for getting the reference settled by the Government Solicitor and the Advocate General; and the question is whether he had any power to make such an allowance.

3. The argument of Mr. Shavaksha for the applicant (assessee) is that under Section 66(2) the assessee is entitled on payment of Rs. 100 referred to in that section to require the Commissioner to refer a point of law to the High Court, and that, no doubt, is so, Mr. Shavaksha contends from that, that the fee of Rs. 100 is intended to cover the costs of the Commissioner in relation to the preparation of the reference. The jurisdiction of the Court, however, to deal with costs is conferred by Sub-section (6) of Section 66, which is in these terms :-Where a Reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court. That sub-section, therefore, merely deals with the costs of a reference made on the application of an assessee, and not with the costs of a reference made by the Commissioner on his own motion, under Sub-section (1) of Section 66. The question is, what costs has the Court discretion to deal with under Sub-section (6) of Section 66.

4. It seems to me that it is the application of the assessee to the Commissioner to state a case and make a reference to the High Court which starts the proceedings, which ultimately result in the reference, and in my opinion the Court can deal with all costs of and subsequent to the application. In a proper case, the Taxing Master is entitled to allow to the assessee, if he has been

given his costs, the costs of obtaining proper advice in settling the application; and where the costs are given, as in this case, to the Commissioner,-in my opinion, the Taxing Master is entitled to allow the Commissioner the costs of getting the reference settled by the Government Solicitor and the Advocate General. It is entirely in the discretion of the Taxing Master to decide whether the case is of sufficient difficulty to justify the Commissioner in adopting that course. If the Taxing Master thinks that it is a simple case, he probably will not allow the fees for settling it. But most of these cases are not very simple, and it is of importance that they should be settled with accuracy by somebody acquainted with the art of draftsmanship.

5. It is said that in effect the assessee is really paying more than 100 rupees, which he is required to pay by the section for getting a reference to the High Court, if he has also to pay the costs for getting the reference settled. But that is a matter in the discretion of the Court. In many cases where this Court gives costs to the Commissioner, we direct that the costs should be "less Rs. 100", if we think that in the particular case the 100 rupees deposit ought to be taken into account. In the present case, I rather gather from the judgment, that we thought that the reference never had any chance of success, and, therefore, we did not make any allowance for the 100 rupees. But whether the assessee ought to pay the costs, plus the 100 rupees, is a matter which can always be adjusted by the Court when it is dealing with costs.

6. I think that the decision of the Assistant Taxing Master was right, and the application must be dismissed with costs, which should be taxed on the Original Side scale.

Blackwell, J.

7. I agree, and have nothing to add.