a fact that this transaction was a transaction in the course of money-lending business, which was being carried on by the assessee. Therefore, we must answer the first question in the affirmative. With regard to the second question, viz.,

"If the answer to the first question be in the affirmative whether on a true interpretation of s. 10 (2) (*xi*) of the Indian Income-tax Act, it is open to an Income-tax Officer to disallow a claim under that section on the ground that the loan had become irrecoverable in a year of account earlier than that in which it was written off."

We should have thought that there was no doubt as to what the answer to this question should be, because as laid down by their Lordships of the Privy Council in *Commr. of Income Tax* v. *Chitnavis*, it was for the Income-tax Officer to determine when the loan become irrecoverable. Therefore, the answer to that question would be in the affirmative. We do not answer the third question, but we have remanded the matter as pointed out in our judgment. There will be no order as to costs.

Attorneys for applicants: *Motichand & Devidas.*

Attorneys for respondent: *N. K. Petigara.*

Answer accordingly.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar.

JAMNADAS PRABHUDAS (APPLICANT) *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY (RESPONDENTS).*

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Constitution of India—Art. 133 (1)—Indian Income Tax Act (XI of 1922) ss. 66, 66A (2)—Reference to High Court under s. 66 of the Indian Income Tax Act, 1922—Whether such decision falls within the terms of and appealable under Art. 133 (1)—Whether proceedings in High Court on reference in income-tax matters civil proceedings under Art. 133 (1).

The expression "judgment, decree or final order" used in Art. 131 (*1*) of the Constitution of India is used in its technical English sense, which means a final declaration or determination of the rights of the parties given on merits. The expression "Judgment, decree or final order" is a compendious one each one of the parts of which bears the same connotation, viz. that there is an adjudication by the Court upon the rights of the parties who appear before it. "Judgment" must not be read in contradistinction to "decree or final order."

* Income-tax Reference No. 3 of 1950.

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The jurisdiction of the High Court in income-tax matters is advisory and consultative though the income-tax authorities are bound to act in accordance with the decision given by the High Court. The decision which it gives and the judgment which it delivers is not a judgment within the meaning of Art. 131 (*1*) of the Constitution of India.

Tata Iron and Steel Co. Ltd. v. *Chief Revenue Authority of Bombay,*[1] *Prabhat Chandra Basu* v. *Emperor,*[2] *Tobacco Manufacturers* v. *State,*[3] *S. Kuppuswami Rao* v. *The King,*[4] *Mahommad Amin Brothers Ltd.* v. *The Dominion of India,*[5] *P. A. Raju Chettiar and Brothers* v. *Commissioner of Income-tax, Madras,*[6] referred to.

Held, therefore, that the assessee had no right of appeal against the decision of the High Court under Art. 131 (*1*).

Quaere, whether the proceedings in High Court on a reference under s. 66 of the Indian Income-tax Act are civil proceedings within the meaning of Art. 131 (*1*).

The assessee had applied to the High Court under s. 66 A (*2*) of the Indian Income-tax Act, 1922, for leave to appeal to the Supreme Court from the judgment of the High Court on reference at his instance. The High Court held that it was not a fit case for appeal to the Supreme Court and rejected the application.

The assessee then applied again to the High Court for leave to appeal to the Supreme Court contending that he had a right of appeal to the Supreme Court under Art. 131 (*1*) of the Constitution of India.

The application was heard.

J. B. Kanga, with *N. A. Palkhivala,* for the applicant.

C. K. Daphtary, Solicitor-General, with *G. N. Joshi,* for the respondent.

CHAGLA C. J. This is an application for leave to appeal to the Supreme Court. This matter came before us on an earlier occasion and we held that under s. 66A (*2*) of the Indian Income-tax Act it was not a fit case for appeal to the Supreme Court. It is now sought to be contended by Sir Jamshedji Kanga that he has a right of appeal under art. 133 (*1*) (*a*) and (*b*) of the Constitution inasmuch as the amount or value of the subject-matter is not less than Rs. 20,000, or in the alternative, that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of not less than Rs. 20,000.

(1) (1923) 47 Bom. 724.
(2) (1925) 52 Cal. 546.
(3) (1950) 30 Pat. 174.
(4) (1949) A. I. R. F. C. 1.
(5) (1950) 11 F. C. R. 842.
(6) (1949) 17 I. T. R. 353.

In our opinion, it is clear that neither art. 133 (*1*) (*a*) nor (*b*) can apply to a judgment given by this Court on a reference made under the Income-tax Act. It is clear that as far as art. 133 (*1*) (*a*) is concerned, it requires that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than Rs. 20,000. Therefore, that sub-clause in terms contemplates that there has been an appeal from the Court of first instance and the amount or value of the subject-matter has to be determined both from the point of view of the Court of first instance and from the point of view of the dispute on appeal. The jurisdiction that this Court exercises under the Income-tax Act is not an appellate jurisdiction. It is an advisory or consultative jurisdiction and therefore in terms art. 133 (*1*) (*a*) would not apply. With regard to cl. (*b*), it is contended by Sir Jamshedji that the same considerations do not apply to sub-cl. (*b*) as this is a judgment of this Court which, if not directly, at least indirectly involves some claim or question respecting property of not less than Rs. 20,000. Here again the difficulty of Sir Jamshedji is that art. 133 (*1*) winds up by stating: "and where the judgment, decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in sub-cl. (*c*), if the High Court further certifies that the appeal involves some substantial question of law." So this also clearly contemplates that the judgment, decree or final order referred to in sub-cl. (*b*) must be a judgment, decree or final order in appeal, and then the final part of art. 133 (*1*) requires the Court to consider whether the final decree in appeal is a decree of affirmance or not. In the first case, unless a substantial question of law is involved, no appeal lies. In the latter case there is an appeal as a matter of right.

The further contention urged by Sir Jamshedji is that in any view of the case this case falls under sub-cl. (*c*) of art. 133 (*1*) and we should certify under that sub-clause that the case is a fit one for appeal to the Supreme Court. The language used in sub-cl. (*c*) is identical with the language used in s. 66A (*2*), and on merits if we have already been satisfied that the case was not a fit one for appeal to the Supreme Court under s. 66A (*2*), it is not likely that we would take a different view if the case did fall under art. 133 (*1*) (*c*). But as the matter is of considerable importance and as the matter has been argued at some length both by Sir Jamshedji and the Solicitor General, it is as well to consider whether a judgment given by this Court on a reference can fall within the terms of art. 133 (*1*) (*c*).

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Now, the first question that has got to be considered is whether a judgment of this Court under s. 66 is a judgment contemplated by the expression "judgment, decree or final order." Sir Jamshedji's contention is that s. 66 (5) provides that the High Court upon hearing of the reference shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment has to be forwarded to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment, and therefore according to Sir Jamshedji there is an obligation upon the revenue authorities to conform to the judgment; the High Court in delivering a judgment decides the case and therefore the decision of the High Court is a judgment within the meaning of art. 133 (*1*). If "judgment" was used in the sense in which that expression is used in the Civil Procedure Code and in the sense in which it is used in s. 66 (*5*), viz. the grounds on which the decision of a Court is based, then undoubtedly Sir Jamshedji would be right. But in our opinion—and our opinion is supported by authorities as I shall presently point out—, the expression "judgment, decree or final order" used in art. 133 (*1*) is used in its technical English sense, which means a final declaration or determination of the rights of parties and it also means a decision given on merits. "Judgment, decree or final order" is a compendious expression and each one of the parts of this expression bears the same connotation, viz. that there is an adjudication by the Court upon the rights of the parties who appear before it. "Judgment" must not be read in this context in contradistinction to "decree or final order." Emphasis is also placed by Sir Jamshedji on the fact that whereas "order" is qualified by "final," "judgment" is not so qualified. We do come across the expression "final judgment, decree or order" for instance in cl. 39 of the Letters Patent. But if the expression "judgment" itself connotes a final adjudication by the Court upon the rights of parties, the adjective "final" which acted as a prefix to the word "judgment" was really tautologous and "judgment" by itself without the qualifying expression "final" still retains the same connotation of finality. This expression has also been used in the Government of India Act in s. 205, and that section provided for appeals to the Federal Court from any judgment, decree or final order of a High Court in British India where the High Court certified that the case involved a substantial question of law as to the interpretation of the Government of India Act or any Order in

Council made under the Act, and that expression has also come in for interpretation and the interpretation put upon s. 205 has been that the judgment there means a final declaration or determination of rights of parties, and it is difficult to hold that our Constitution makers with s. 205 before them when they used the same language that was used in s. 205 used it with a different meaning in art. 133 (*1*).

Sir Jamshedji says that if we were to give this meaning to the word "judgment" used in art. 133 (*1*), then the citizen would be totally deprived of his right to appeal to the Supreme Court in income-tax matters. For this purpose our attention is drawn to Art. 135 which confers upon the Supreme Court the jurisdiction and powers which were exercisable by the Federal Court immediately before the commencement of the Constitution. This jurisdiction is additional to the jurisdiction conferred upon the Supreme Court by arts. 133 and 134, and Sir Jamshedji is right that if the Federal Court had no jurisdiction to hear income-tax matters, then the Supreme Court would not have the jurisdiction under art. 135, and the result might be that there would be no right to appeal to the Supreme Court either under art. 133 or under art. 135. But the position in law is clear that the Federal Court had the jurisdiction before the commencement of the Constitution to hear appeals in income-tax matters. The Privy Council had the right to hear appeals under s. 66A (*2*). Then an Act was passed, being Act I of 1948, enlarging the appellate jurisdiction of the Federal Court, and under this Act the jurisdiction was conferred upon the Federal Court to hear all appeals in civil matters which were being heard by the Privy Council, and it was by reason of this Act that the Federal Court entertained appeals in income-tax matters. Then came Act V of 1949 passed by the Constituent Assembly, and that Act abolished the jurisdiction of the Privy Council in all matters which it heard by the compendious name of Indian Appeals. Therefore, the result of these two Acts was that before the Constitution came into force the Federal Court had the same jurisdiction that the Privy Council had under s. 66A (*2*) to hear appeals in income-tax matters, and if the Federal Court had the jurisdiction, the Supreme Court has also jurisdiction under art. 135. So that our putting this particular interpretation upon the expression "judgment" in art. 133 (*1*) will not have the effect of depriving the subject of his right of appeal to the Supreme Court.

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Turning to the authorities on this point, the Privy Council had occasion in *Tata Iron and Steel Company, Limited* v. *Chief Revenue Authority of Bombay*[1] to construe the expression "judgment." A case was stated to the High Court of Bombay and referred to it by the Chief Revenue Authority under s. 51 of the Income-tax Act of 1918. That Act did not provide for any appeal to the Privy Council. An appeal was preferred to the Privy Council and it was contended that the appeal lay under cl. 39 of the Letters Patent, as that clause provided for appeal to the Privy Council from a final judgment, decree or order of the High Court. The Privy Council held that the appeal was not competent inasmuch as the decision of the High Court under the Income-tax Act was not a final judgment, decree or order. The Privy Council drew the distinction between an order of a Court which is final and an order of a Court which is merely advisory, and the Privy Council further pointed out that the mere fact that a particular authority was bound to act upon the decision given by the High Court did not necessarily make the decision of the High Court a final order. Therefore, the test the Privy Council applied was whether the jurisdiction exercised by the High Court in income-tax matters was an advisory and consultative jurisdiction or a jurisdiction which enabled the High Court to adjudicate upon the rights of the parties, and the Privy Council took the view that in income-tax matters the jurisdiction of the High Court was purely advisory and the decision of the High Court exercising that advisory jurisdiction did not constitute a "judgment" within the meaning of cl. 39 although the income-tax authorities were bound to act in accordance with the decision given by the High Court. The position is identical under s. 66 (5). Under this section too the High Court, as under the old Act of 1918, has to decide the question and deliver the judgment and the Appellate Tribunal is bound to conform to the judgment. But notwithstanding all this the jurisdiction of the High Court continues to remain advisory or consultative, and the decision which it gives and the judgment which it delivers is not a "judgment" within the meaning of art. 131.

The Calcutta High Court had also occasion to consider this matter in *Prabhat Chandra Barua* v. *Emperor*.[1] In that case in a reference made under s. 66 the two Judges of the Calcutta High Court differed, and the judgment of the senior Judge

[1] (1923) 47 Bom. 724, s. c. 25 Bom. L. R. 908, P. C. [2] (1924) 52 Cal. 546.

under cl. 36 of the Letters Patent prevailed. An appeal was preferred under cl. 15 of the Letters Patent, and the question that arose for the determination of the High Court was whether the decision of the High Court on the reference was a judgment which would attract the operation of cl. 15, and the High Court of Calcutta held that it was not a judgment within the meaning of cl. 15 and no appeal lay against the decision of a Judge of the Calcutta High Court under cl. 15, and in coming to that conclusion they relied upon the judgment of the Privy Council in *Tata Iron and Steel Company's* case.

The Patna High Court too had to consider a question which directly arose under art. 133. A full bench of the Patna High Court in *Tobacco Manufacturers* v. *The State*[1] had to consider whether an appeal lay under art. 133 from a judgment given by the Patna High Court in a reference made under s. 21 (*3*) of the Bihar Sales Tax Act, 1944. The provisions in the Bihar Sales Tax Act with regard to the reference were similar to the provisions of the Indian Income-tax Act, and the Patna High Court had to consider the identical question and the Patna High Court took the view that a decision given by the Patna High Court on a reference under the Sales Tax Act did not constitute a judgment within the meaning of art. 133. The Patna High Court has referred to and relied on two judgments of the Federal Court. One is the judgment reported in *Kuppuswami Rao* v. *The King.*[2] In that case Chief Justice Kania was called upon to construe the provisions of s. 205 of the Government of India Act and the learned Chief Justice observed 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 Court, and that is the interpretation which the learned Chief Justice put upon the expression "judgment" in s. 205. The Patna High Court also relied on a subsequent judgment of the Federal Court reported in *Mohammad Amin Brothers Ltd.* v. *The Dominion of India.*[3] There the High Court set aside an order of another learned Judge of the same Court directing the compulsory winding up of the appellant company. An appeal was preferred from that order and a preliminary objection was raised that the appeal was incompetent under s. 205 (*1*) of the Government of India Act, and the Federal Court held that the appeal did not lie, inasmuch as no

[1] (1950) 30 Pat. 174, F. B.

[2] [1949] A. I. R. F. C. 1.

[3] [1950] 11 F. C. R. 842.

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finality could attach to the order of the Court. The Patna High Court refused to be impressed, and in our opinion rightly, by the argument that was advanced before it to draw a distinction between "judgment" as used in art. 133 and "final judgment" as used in cl. 39 of the Letters Patent.

Our attention has been drawn to a judgment of the Madras High Court which seems to take a different view and that is *P. A. Raju Chettiar* v. *Commr. of Inc.-Tax.*[1] The only question that the High Court had to consider was whether an appeal lay to the Federal Court under the provisions of Act I of 1948, and the Court decided that the appeal did lie inasmuch as the judgment was one from which a direct appeal could have been brought to His Majesty in Council. Having decided this, the learned Judges went on to consider the Privy Council case in *Tata Iron and Steel Company's* case and they expressed the opinion that the difference in language between "judgment" and "final judgment" makes the Privy Council case inapplicable to the application which they had to decide. With very great respect to the learned Judges, it is difficult to understand how any question arose with regard to what the Privy Council decided in *Tata Iron and Steel Company's* case.

Another point has also been raised which is also of considerable importance, and that is whether the proceedings in this Court on a reference under s. 66 are civil proceedings, because it will be noticed that it is not every judgment, decree or final order which is subject to appeal to the Supreme Court; it must be a judgment, decree or final order in a civil proceeding; and the contention is that proceedings in this Court on a reference are not civil proceedings but revenue proceedings, and attention is drawn to the scheme of the Income-tax Act by which final assessment orders are made by revenue authorities, but in making those orders if a matter is referred to the High Court for its opinion, the revenue authorities are bound to make the assessment order in conformity with the opinion given by the High Court on the points referred to, and therefore the contention is that a reference is part of revenue proceedings, and under a revenue Act and in respect of a revenue matter certain jurisdiction is conferred upon the High Court to give advice to the revenue authorities. On the other hand, the contention urged is that civil proceedings is used in contradistinction to criminal proceedings and that all the work that is done by the High Court must necessarily be either civil or criminal, and

[1] (1949) 17 I. T. R. 353.

although it is pointed out that the matter may be a revenue matter, the proceedings which come before the High Court are none-the-less civil proceedings. As against this our attention is drawn to art. 132 (*1*) in which a right of appeal is given to the Supreme Court in Constitutional matters and the language used by the Constituent Assembly in that article is

> "Any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding."

Therefore, it seems that the Constituent Assembly did contemplate proceedings before a High Court which may be neither civil nor criminal. In our opinion, inasmuch as we have held that the expression "judgment, decree or final order" used in art. 133 (*1*) does not apply to a decision given by this Court under s. 66 of the Income-tax Act on a reference, it is unnecessary to decide whether proceedings on a reference in this Court are civil proceedings within the meaning of art. 133 (*1*). Therefore, when a petition is made to this Court arising out of a reference decided by this Court for leave to appeal to the Supreme Court, apart from art. 132 this Court has to consider whether leave should be granted or not only under s. 66A (*2*) and not under art. 133 of the Constitution.

As we have already held that this is not a fit case for appeal to the Supreme Court under s. 66A (*2*) of the Income-tax Act, the petition must be dismissed with costs.

Notice of motion dismissed with costs.

Attorneys for applicant: *Manilal, Kher, Ambalal & Co.*

Attorney for Commissioner: *N. K. Petigara.*

Petition dismissed.

P. M. P.