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would be an industrial tribunal, and if the Industrial Court would be an industrial tribunal under s. 2 then an appeal is provided against the decision of the Industrial Court under s. 7 to the Appellate Tribunal and it is under this provision that the appeal was entertained by the Labour Appellate Tribunal. In our opinion the appeal was rightly entertained and the Labour Appellate Tribunal had jurisdiction to entertain the appeal.

The result is that the petition fails and must be dismissed. No order as to costs.

Petition dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL, GENERAL AND INHERENT JURISDICTION

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

1955 Oct. 5

THE INCOME-TAX APPELLATE TRIBUNAL, BOMBAY AND OTHERS, APPELLANTS *v.* MESSRS. S. C. CAMBATTA & CO., LTD., BOMBAY, RESPONDENTS.*

Indian Income-Tax Act (XI of 1922), ss. 33 & 66—Reference to High Court—Income-Tax Appellate Tribunal passing orders in accordance with directions given by High Court on such reference—Question of law arising out of such orders—Whether further reference lies under s. 66?

Where a reference is made to the High Court under s. 66 (*1*) or (*2*) of the Indian Income-Tax Act, 1922, the decision of the Income-Tax Appellate Tribunal out of which the reference arose cannot be regarded as final. It is only when the question of law is decided by the High Court and the Tribunal passes an order giving effect to the directions given by the High Court that the appeal before the Tribunal is finally disposed of. Such order of the Tribunal is, therefore, an order passed under sub-s. (*4*) of s. 33 of the Act; and if any question of law arises out of such order, the assessee or the Commissioner has the right to have such question of law referred to the High Court under s. 66 (*1*) or (*2*) of the Act.

Facts appear in the Judgment.

G. N. Joshi with *M. P. Amin*, Advocate General for the Appellants.

N. A. Palkhivala with *B. A. Palkhivala* for the Respondents.

Chagla C. J.—The question that arises for our consideration in this appeal does not seem to have been considered by any Court. Perhaps the reason is—so it seems to us—that the answer is very obvious. It appears that the petitioner company transferred to a subsidiary company the business of Eros

*Appeal No. 2 of 1955; Miscellaneous Application No. 377 of 1954.

Theatre & Restaurant and the subsidiary company paid Rs. 5,00,000 for goodwill. An application was made to the Appellate Tribunal under s. 66 (*1*) of the Income Tax Act with regard to the assessment of the petitioner company, the income tax authorities having held that in respect of the petitioner company's chargeable accounting period 1943 the Excess Profits Tax Officer was not bound to take into consideration the value of the goodwill in computing the average capital for the purpose of s. 6 (*1*) of the Excess Profits Tax Act. As the Tribunal rejected the application the petitioner company approached the High Court under s. 66 (*2*) and we directed the tribunal to state a case, and the question of law on which we asked the tribunal to state a case was whether in the computation of capital employed in the business of the assessee the Tribunal erred in not including the value of the goodwill or any portion thereof. We answered this question in favour of the assessee. The Appellate Tribunal then passed an order valuing the goodwill of the Eros Theatre & Restaurant at Rs. 2,00,000 and the petitioner company applied to the Tribunal under s. 66 (*1*) to refer a question of law which arose out of this decision of the Tribunal. The Tribunal took the view that the application was misconceived and dismissed it. On that the petitioner company presented a petition before Mr. Justice Desai for a writ directing the Tribunal to hear this application which had been dismissed by the Tribunal. The learned Judge granted the relief sought to the petitioners and the Income Tax Authorities have now come in appeal.

Mr. Joshi who appears for the Income Tax Authorities is perfectly right when he contends that the power of reference is a limited power conferred upon the High Court under s. 66 and that we should not extend the ambit of that power. He is equally right when he contends that a reference only lies under s. 66 provided that a question of law arises out of an order passed by the Tribunal under sub-s. (*4*) of s. 33, and his whole attempt has been to satisfy us that the second order passed by the Tribunal was not an order passed under s. 33 (*4*). His submission is that the powers that the Tribunal exercises under s. 33 and under s. 66 (*5*) are separate and distinct powers and they should not be confused and when the High Court disposes of a reference and exercises its advisory jurisdiction and gives directions to the Tribunal to give effect to its judgment, it is exercising a function which falls under s. 66 (*5*) and not under s. 33 (*4*), and inasmuch as no reference can arise out of an order passed by the Tribunal under s. 66 (*5*) the application of the petitioners was incompetent.

Looking to the scheme of the Act, under s. 33 the Appellate Tribunal is constituted the appellate authority over the

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decisions of the Appellate Assistant Commissioner, and under sub-s. (4) it is provided:

"The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."

sub-s. (6) provides:

"Save as provided in s. 66 orders passed by the Appellate Tribunal on appeal shall be final."

Therefore it is clear that except in cases which may go up to the High Court on a reference, the decision of the Appellate Tribunal under s. 33 is final. But where a reference does go up to the High Court, no finality attaches to the decision of the Appellate Tribunal because by reason of the decision of the High Court the decision given by the Appellate Tribunal is liable to be reopened and it will be the duty of the Appellate Tribunal to give effect to whatever decision the High Court gives. When we turn to s. 66, sub-s. (5) provides:

"The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment."

Mr. Joshi has laid great emphasis on the expression used in this sub-section that the Appellate Tribunal has to dispose of the case and he says that the Legislature does not provide that the Appellate Tribunal has to dispose of the appeal which has already been disposed of under s. 33. It is clear that the expression "case" used in the latter part of sub-s. (5) has not the same connotation as the expression used in the earlier part of that sub-section. The case that the High Court hears is the case stated to it under s. 66 by the Tribunal. The case that the Appellate Tribunal has to dispose of is the matter before it or the appeal which has lost its finality by reason of s. 33 (6). Therefore, reading s. 33 (6) and s. 66 (5) together, the scheme is fairly clear that when a reference is made to the High Court either under s. 66 (1) or s. 66 (2) the decision of the Appellate Tribunal cannot be looked upon as final; in other words, the appeal is not finally disposed of. It is only when the High Court decides the case, exercises its advisory jurisdiction, and gives directions to the Tribunal on questions of law, and the Tribunal reconsiders the matter and decides it, that the appeal is finally disposed of. In one sense, as the learned Judge rightly points out, it may be said that on the High Court giving its decision there is a continuation of the appeal under s. 33, in another sense it may be said that there a rehearing of the appeal by the Appellate Tribunal, but it is clear that what

the Appellate Tribunal is doing after the High Court has heard the case is to exercise its appellate powers under s. 33. Any other construction which might be put upon s. 66 (5) will lead to absurdities. For instance, under s. 33 (4) an obligation is cast upon the Appellate Tribunal to hear both the parties and to communicate any order that it has passed to the assessee and to the Commissioner. It is suggested that when the Appellate Tribunal disposes of the matter after the reference has been heard by the High Court, the obligation cast upon it under s. 33 (4) does not attach to the further hearing contemplated by s. 66 (5). Take this very case where pursuant to the directions of the High Court the Tribunal had to value the goodwill and it put a value of Rs. 2,00,000 upon the goodwill. Can it be seriously suggested that in computing the value of the goodwill the Appellate Tribunal was under no obligation to give an opportunity to both the parties to be heard? It is clear therefore that the appeal has not been finally disposed of whenever there is a reference to the High Court. The shape that the appeal would ultimately take and the decision that the Appellate Tribunal would ultimately give would entirely depend upon the view taken by the High Court. The High Court may accept the view of the law taken by the Tribunal, in which case the decision of the Appellate Tribunal would stand. The High Court may reverse the decision of the Appellate Tribunal on a question of law, in which case the appeal would have to be disposed of in accordance with the opinion of the High Court. Therefore, in all cases where s. 66 comes into play the final decision in appeal has only to be given by the Appellate Tribunal after the reference has been made and that decision can only be given under s. 33 (4). It would indeed be curious that if questions of law were to arise when the Appellate Tribunal was giving effect to the directions of the High Court that those questions of law could not be referred to the High Court and that the Appellate Tribunal would only be subject to the control of the High Court up to a particular stage of the appeal and that control would disappear as soon as the reference was disposed of. We wish to make it clear that the questions of law which can be agitated in what we might for convenience describe as the second reference, could only be those questions which do not arise out of the first order passed by the Appellate Tribunal and which have not been considered by the Appellate Tribunal in its first order. If a question has been considered and no reference is sought, then it is not open to the assessee or the Commissioner to seek a reference at a subsequent stage because that reference would be barred. But if in giving effect to the decision of the High Court, the Tribunal passes an order out of which a question of law arises,

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which question never arose out of the first order, then there is no reason why the assessee or the Commissioner should not have the right of coming to the High Court under s. 66 (*1*) or s. 66 (*2*).

In our opinion, the learned Judge below was right in the view that he took. The result is that the appeal fails and must be dismissed with costs.

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

Attorneys for Respondents: *Gagarat & Co.*

Appeal dismissed.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Chainani and Mr. Justice Gokhale.

GANGARAM RANABA MALATWADI (ORIGINAL DEFENDANT NO. 2) APPELLANT *v.* DATTO APPAJI POWAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 TO 6), RESPONDENTS.*

1955 Oct. 14

Indian Registration Act (XVI of 1908), s. 75 (1), (2), and (3)—Registration of Sale-Deed more than 30 days after the order of the Registrar—Whether valid.

Once the Registrar passes an order under s. 75 (*1*) of the Indian Registration Act that a document be registered, it may be registered even if it is presented after the expiry of the period of 30 days prescribed under s. 75 (*2*). If the document is presented within the period prescribed under s. 75 (2), the Sub-registrar is bound to register it. S. 75 (2) does not, however, bar the Sub-registrar from registering the document presented after the period, although he cannot be compelled to do so.

Held, therefore, that a document registered after the expiry of the period under s. 75 (*2*) was validly registered.

Chhotey Lal v. *Collector of Moradabad*,[1] followed.

Mafizur Rahman v. *Jamila Khatun*,[2] dissented from.

SECOND Appeal against the decision of M. S. Hegde, Esquire, Assistant Judge at Belgaum affirming the decree passed by S. R. Joshi, Esquire, Civil Judge (Junior Division) at Shahapur.

Suit for possession or in the alternative for damages and mesne profits.

The material facts are fully set forth in the Judgment of Chainani J.

A. A. Adarkar, for the Appellant.

V. H. Gumaste, for Respondent No. 1.

Chainani J.—The facts which are material for decision of

*Second Appeal No. 41 of 1955.

1. (1922) L. R. 49, I. A. 375. 2. (1939) 42 C. W. N. 1174.