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Mrs. Hem Nalini
Judeh
v.
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Sarojbashini Bose
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house simply because Mrs. Bose said in her application for letters of administration that the house belonged to Mrs. Mitter. It appears that after the death of Mrs. Mitter the three sisters put forward three separate wills each in her favour and there was no question of one sister acting on any representation made by another. We are therefore of opinion that no question of estoppel arises in this case.

The appeal therefore fails and is hereby dismissed: No order as to costs.

Appeal dismissed.

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February 19.

M/S. SOORAJMULL NAGARMULL

v.

COMMISSIONER OF INCOME-TAX, CALCUTTA

(And connected appeal)

(S. K. DAS, M. HIDAYATULLAH and J.C. SHAH, J.J.)

Income Tax—Order of Tribunal—Applications by assessee and Commissioner of Income-tax to state a case, dismissed by High Court—Appeal to Supreme Court against order of Tribunal—If maintainable—Indian Income-tax Act, 1922 (11 of 1922) ss. 33(4), 66(2)—Constitution of India, Art. 136.

The Income-tax Appellate Tribunal passed an order s. 33(4) of the Indian Income-tax Act disposing of an appeal. The assessee as well as the Commissioner of Income-tax, Calcutta, applied to the High Court for orders requiring the Tribunal to state a case under s. 66(2), which applications were dismissed by the High Court. The assessee and the Commissioner of Income-tax appealed to the Supreme Court against the order of the Tribunal, with special leave. The main contention before the Supreme Court was that even if the appeal against the order of the High Court under s. 66(2) fails on merits, the court has power to consider the appeal against the order of the Tribunal.

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Held, that when the aggrieved party approaches the High Court under a taxing statute for an order calling for a statement of the case and the High Court rejects the application, this Court in exercise of its powers under Art. 186 of the Constitution of India will not in the absence of special or exceptional circumstances allow the order of the High Court to be by-passed by entertaining an appeal directly against the order of the Tribunal under the taxing Act. The Supreme Court will take this view even if an appeal has been filed against the order of the High Court as well.

Chandi Prasad Chhokhani v. State of Bihar, (1962) 2 S.C.R. 276, *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal*, [1955] 1 S.C.R. 941 and *Sardar Baldev Singh v. Commissioner of Income-tax, Delhi and Ajmer*, [1961] 1 S.C.R. 482, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeals
Nos. 238 and 239 of 1961.

Appeals by special leave from the judgment and order dated March 28, 1957, of the Income-tax Appellate Tribunal (Calcutta Bench) in I.T.A. Nos. 722 and 7341 of 1954-55.

R. J. Kolah, *D. H. Dwarkadas* and *B. P. Maheshwari*, for the appellant in C.A. No. 238 of 1961 and the respondent in C.A. No. 239 of 1961.

K. N. Rajagopala Sastri and *D. Gupta*, for the respondent in C.A. No. 238 of 1961 and respondent in C.A. No. 239 of 1961.

1962. February 19. The Judgment of the Court was delivered by

SHAH, J.—The assesses and the Commissioner have preferred appeals against the order of the Tribunal passed under s. 33(4) of the Indian Income-tax Act, after their applications of the High Court of Calcutta for orders requiring the Tribunal to state a case under s. 66(2) were dismissed.

Shah J.

Counsel for the assesses contends that even if his appeal against the order of the High Court under s. 66(2) fails on the merits, this Court has

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power to consider their appeal against the order of the Tribunal. This Court in *Chandi Prasad Chhokhani v. The State of Bihar*,⁽¹⁾ in dealing with cases where against the order passed by a Tax Tribunal, without appealing against the order of the High Court refusing to call for the statement of the case set out the practice as follows:

- (a) Where the aggrieved party approaches the High Court under a taxing Statute for an order calling for a statement of the case and the High Court rejects the application, this Court in exercise of its powers under Art. 136 will not ordinarily allow the order of the High Court to be by-passed by entertaining an appeal directly against the order of the Tribunal. Such exercise of power would be particularly inadvisable where the result may be conflict of decisions of two Courts of competent jurisdiction. The scheme of the taxing statutes is to avoid such a conflict by making the decision of the taxing authorities on questions of fact final subject to appeal, revision or review as provided by the statutes and the decision of the High Court subject to appeal to this Court final on questions of law.
- (b) This rule does not bar the Court from granting special leave where circumstances are exceptional, such as, in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal*,⁽²⁾ where the Tribunal had violated fundamental rules of justice or as in *Sardar Baldev Singh v. Commissioner of Income-tax, Delhi & Ajmer*⁽³⁾, where on account of special circumstances over which the aggrieved party has no control the High Court was

(1) [1962] 2 S.C.R. 276.

(2) [1955] 1 S.C.R. 941.

(3) [1961] 1 S.C.R. 482.

unable to consider the application for calling for a statement of the case on the merits, and the right of the party to approach the High Court was thereby lost.

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Counsel for the assesses contended that in *Chhokhani's case* (1) no appeal at all was filed by the assessee against the order of the High Court and the principle of that case is inapplicable in a case where the aggrieved party has appealed against the order of the High Court as well as against the order of the Tribunal. It is true that in the case before us appeals have been filed against the order of the Tribunal deciding the appeal under s. 33(4) of the Indian Income-tax Act as well as the order of the High Court under s. 66(2) refusing to require the Tribunal to state a case: but we fail to see any distinction in principle between a case in which in appealing against the order of the Tribunal no appeal is filed against the order of the High Court and a case in which an appeal is filed against the order of the Tribunal as well as against the order of the High Court and the latter appeal is dismissed because it has no merit.

Counsel has not invited our attention to any special or exceptional circumstances in this case. We have heard elaborate arguments on behalf of the assessee and the Commissioner on their respective contentions and for reasons already set out are of opinion that no case is made out for calling for a statement of the case from the Tribunal. If we proceed to hear the appeal against the order of the Tribunal after upholding the order of the High Court that no question of law arose out of the order of the Tribunal, it would be a departure from the well-settled rule that ordinarily we do not exercise of our jurisdiction under Art. 136, enter upon a reappraisal of the evidence on which the order of

(1) [1961] 2 S.C.R. 276.

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the Court or Tribunal is founded. The Legislature has expressly entrusted the power of appraisal of evidence to the Taxing authorities, and the decision of those authorities would ordinarily be regarded as final. This is not to say that in a proper case this Court may not, in the interest of justice when occasion demands it, review the evidence. The power of this Court under Art. 136 is not restricted; but it is only in very exceptional cases that this Court enters upon appraisal of evidence in appeals filed with special leave and this case does not disclose any such exceptional circumstances.

On this ground the appeals Nos. 238 and 239 of 1961 filed by the assesseees and the Commissioner against the order of the Tribunal must fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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INDORE MALWA UNITED MILLS LTD.

v.

THE COMMISSIONER OF INCOME-TAX
(CENTRAL) BOMBAY

(S. K. DAS, M. HIDAYATULLAH and J.C. SHAH, JJ.)

Income Tax—Proceedings under s. 24 of the Indian Income-tax Act,—Scope and effect of section and its proviso—Set-off of loss—Indian Income-tax Act, 1922 (11 of 1922). ss. 24(1), (2), 14(2) (c), 4(1) (a), (c)½.

The assessee company carried on a business of manufacture and sale of textile goods. The manufacture was made at its mills in Indore which was an Indian State before integration and had its own law as to income-tax known as the Indore Industrial Tax Rules, 1927. The sales of textile goods so manufactured were made at various places, some inside and some outside the taxable territories of the then British India. For and upto assessment year 1949-50 the assessee company was treated as a non-resident. Indore became a part of the taxable territories within the meaning of the Indian