

to refer to the High Court the question of law raised in this appeal was also rejected by the High Court. It is, therefore, said that this appeal is concluded by the order of the High Court last mentioned. But it appears that this Court had granted leave to appeal from the High Court's order refusing to issue the writ before the appeal to the tribunal had been dismissed. The appellant could have appealed from the High Court's order refusing to direct a reference of the question but he chose to prosecute the appeal against the order in the petition for the writ which would have given him the same relief. Either remedy was open to him and neither can be said in the circumstances to be barred by the other.

The appeal however fails on the merits and it is dismissed with costs.

Appeal dismissed.

CHANDER BHAN GOSAIN

v.

STATE OF ORISSA & ORS.

(S.K. DAS, A.K. SARKAR and M. HIDAYATULLAH JJ.)

Supreme Court Practice—Appeal—Court Fee—One petition filed under Art. 226 to challenge many assessment orders—Appeal against one order of High Court—Court fee payable.

This appeal was against the order of the Deputy Registrar directing the present case to be registered as nine appeals and requiring the appellant to pay nine sets of court fees. The case originated out of one petition under Art. 226 of the Constitution challenging the validity of various assessment orders. The High Court passed one order on the petition and one appeal was filed in this Court.

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Held that the appellant should pay only one set of court fee and other charges as in a single appeal. It could not be said that there were as many proceedings as there were assessment orders as the appellant had by a single petition challenged them all together;

Lajwanti Sial's case, Petition for special leave No. 673 of 1959 and *Kishinchand Chellaram's case*, C.A. Nos. 462 to 465 of 1960, referred to.

CIVIL APPELLATE JURISDICTION: Civil Misc. Petition No. 1398 of 1962.

Appeal against the order of the Deputy Registrar dated March 28, 1962 in Civil Appeals Nos. 41 to 49 of 1962.

A. Ranganadham Chetty, B.D. Dhawan, S.K. Mehta and K.L. Mehta, for the petitioner.

C. K. Daphtary, Attorney-General for India, R. Ganapathy Iyer and R. N. Sachthey, for the respondents.

1963. April 5. The Order of the court was delivered by

Sarkar J.

SARKAR J.—This is an appeal against the order of the Deputy Registrar directing the present case to be registered as nine appeals and requiring the appellant to pay nine sets of court-fees. The Deputy Registrar had relied on two cases of this Court, namely, *Lajwanti Sial's case* (Petition for Special Leave No. 673 of 1959) and *Kishinchand Chellaram's case* (Civil Appeals No. 462 to 465 of 1960). We do not think that these precedents cover the present case.

In *Lajwanti's case* there were a number of applications under s. 66 (2) of the Income-tax Act for reference of the same question. There were in fact a number of separate references but they were

dealt with by one judgment from which the appeal to this Court arose. That was really a case of five appeals for the common judgment must be taken to have been delivered in each of the different reference cases.

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Kishinchand Chellaram's case is also not helpful because there four applications by four different assesseees had been made for reference of three identical questions arising in each assessment case under s. 66 (1) of the Income-tax Act. Though it appears that there was one order of reference to the High Court and the High Court treated the case as a single case of reference, it could be said that there were in fact a number of references.

The present case however originated out of one petition under Art. 226 of the Constitution challenging the validity of various assessment orders. Obviously here, there was only one proceeding. It could not be said that there were as many proceedings as there were assessment orders for the petitioner had by a single petition challenged them all together. When an appeal is taken to this Court from the judgment of the High Court in such a petition, it is impossible to contend that there are more appeals than one. Therefore, the appellant before us is liable only to pay one set of court-fee and other charges as in a single appeal. Action may be taken accordingly by the office, if necessary, by refunding the excess charges made.