Supreme Court of India
Chandi Prasad Chokhani vs The State Of Bihar on 24 April, 1961
Equivalent citations: 1961 AIR 1708, 1962 SCR (2) 276
Author: S Das
Bench: Das, S.K., Kapur, J.L., Hidayatullah, M., Shah, J.C., Aiyyar, T.L. Venkatarama

PETITIONER:
CHANDI PRASAD CHOKHANI

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT:
24/04/1961

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
AIYYAR, T.L. VENKATARAMA
KAPUR, J.L.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1961 AIR 1708 1962 SCR (2) 276
CITATOR INFO :

R	1962 SC1323	(2,6,9)
R	1962 SC1326	(5)
F	1962 SC1619	(7)
R	1962 SC1621	(115)
F	1963 SC 491	(2,3)
RF	1963 SC 835	(2,4)
HO	1964 SC 782	(8)
R	1966 SC 814	(8)
R	1967 SC 338	(2)
D	1968 SC 985	(6)
RF	1969 SC1201	(36)
R	1970 SC 1	(7)

ACT:
Supreme Court-Grant of Special Leave--Practice--Appeal by Special Leave-Grant, of special leave--Propriety, if can be questioned at hearing of appeal.
Sales tax--Orders of Board of Revenue in revision-Orders of High Court-Special leave granted against orders of Board--Maintainability of appeal.

HEADNOTE:

The appellant firm was assessed to sales tax under the provisions of the Bihar Sales Tax, 1944, for three periods commencing from October 1, 1947, and ending on March 31, 1050. Its claim for certain deductions was disallowed, and its applications in revision under s. 24 Of the Act to the Board of Revenue, Bihar, were dismissed by three orders dated August 20, 1953, September 3, 1953 and April 30, 1954. Under S. 25(1) of the Act the appellant applied to the Board to state a case to the High Court of Patna on certain questions of law, but the applications were dismissed by order dated August 30, 1954, on the ground that no questions of law arose. The appellant then moved the High Court for requiring the Board to state a case on the said questions of law. The High Court dismissed the applications in respect of the first two periods of assessment, but by order dated November 17, 1934, directed the Board to state a

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case in regard to the third period on one of the questions of law which only, in its opinion, arose. By its judgment dated January 21, 1957, the High Court answered the question against the appellant. On February 17, 1955, the appellant made applications to the Supreme Court for special leave to appeal against the orders of the Board of Revenue dated August 20, 953, and September 3, 1953, in respect of the first two periods; and on April 12, 1955, it similarly applied for special leave in respect of the third period. Leave was granted in respect of all the three applications by order dated December 23, 1955, the leave granted in regard to the third period being confined to the order of the Board dated August 30, 1954. When the appeals came up for hearing the question was raised as to whether the appeals were maintainable in view of the fact that no applications for leave to appeal were filed against the orders of the Board of Revenue and the High Court subsequent to the orders of the Board in respect of which only special leave had been granted.

Held, that though the words of Art. 136 of the Constitution of India are wide, the Supreme Court has uniformly held as a rule of practice that there must be exceptional and special circumstances to justify the exercise of the discretion under that Article.

Pritam Singh v. The State, [1950] S.C.R. 453, V. Govindarajulu Mudaliar v. The Commissioner of Income-tax, Hyderabad, A.I.R. 1959 S.C. 248 and Messrs Chimmonlall Rameshwarlal v. Commissioner of Income-tax (Centyal), Calcutta, A.I.R. 1960 S.C. 280, relied on.

Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal, [1955] 1 S.C.R. 941 and Baldev Singh v. Commissioner of Income-tax, Delhi and Ajmer, [1960] 40 I.T.R. 605, explained.

Held, further, that in the circumstances of the present case the appellant was not entitled to a grant of special leave

against the orders of the Board of Revenue where the result would be to by-pass the High Court by ignoring its orders.
Held, also, that though special leave might have been granted on an application made under Art. 136, the Court is not precluded from coming to a conclusion at the time of the hearing of the appeal that such leave ought not to have been granted.
Baldota Brothers v. Libra Mining Works, A.I.R. 1961 S.C.C. 100, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 170 to 172 of 1959.

Appeals by special leave from the decision dated August 20, 1953/September 3, 1953, and August 30, 1954, of the Board of Revenue, Bihar at Patna in Reference Cases Nos. 461 and 462 of 1952 and 430 of 4954, respectively.

Veda Vyas and B. P. Maheshwari, for the appellant. R. C. Prasad, for the Respondent.

1961. April 24. The Judgment of the Court was delivered by S. K. DAS,J.-These three appeals with special leave granted under Art. 136 of the Constitution have been heard together and this judgment will govern them all. They raise a common question as to the practice of this Court, which we shall presently state. But before we do so, we must first set out the facts in so far as it is necessary to state them in order to appreciate the precise nature of the question that has arisen for consideration in these appeals. The relevant facts are these. The firm of Messrs. Durga Dutt Chandi Prasad, appellant in these appeals, carried on a business of dealing in several kinds of goods but mostly in raw jute at Sahebganj in Bihar. It was registered as a dealer under s. 4 of the Bihar Sales Tax Act, 1944, with effect from July 1, 1946. For three periods, commencing from October 1, 1947 and ending on March 31, 1950, it was assessed to sales tax on its turnover of the relevant periods, which consisted inter alia of purchases alleged, to have made on behalf of two other jute mills outside Bihar, namely, the Raigarh Jute Mills and the Bengal Jute Mills, and also of dispatches of jute said to have been made to the dealer's own firm in Calcutta for sale in Calcutta. For the assessment period commencing on October 1, 1947 and ending on March 31, 1948 the appellant claimed a deduction of (a) Rs. 6,58,880-5-9 on the ground that the said amount represented purchases made on behalf of the aforesaid two jute mills, and (b) Rs. 1,62,662-13-3 being despatches of jute made to the dealer's own firm in Calcutta. Similarly, for the next assessment period commencing on April 1, 1948 and ending on March 31, 1949 the appellant claimed a deduction of certain amounts (the exact amounts being irrelevant for our purpose) on the two grounds mentioned above from the relevant turnover. The claim of the appellant was that purchases made on behalf of the two jute mills aforesaid and the despatches of jute made to the appellant's own firm in Calcutta were not `sales' within the meaning of the Bihar Sales Tax Act, 1947 (hereinafter called the Act). For the third period of assessment commencing on April 1, 1949 and ending on March 31, 1950 a similar claim was made. But for this period there was an additional claim with regard to the sale of mustard seed worth Rs. 1,00,513- 119

to Messrs. Panna Lal Binjraj for which the appellant claimed a deduction.

On June 7, 1951 the Sales Tax Officer concerned disallowed the claim of the appellant for the first two periods and by an order dated April 17, 1953, the claim for the third period was also disallowed. The appellant then preferred appeals under the relevant provisions of the Act. These appeals were heard by the Deputy Commissioner of Commercial Taxes,, Bihar, and were dismissed by him. Then the appellant filed applications in revision under s. 24 of the Act to the Board of Revenue, Bihar. The Board by its orders dated August 20, 1953, and September 3, 1953, dismissed the petitions of revision relating to the first two periods and by its orders dated April 30, 1954, also dismissed the petition of revision relating to the third period. Under s. 25(1) of the Act-the appellant moved the Board to state a case to the High Court of Patna on certain questions of law which, According to the appellant, arose out of the orders passed. The Board, however, refused to state a case inasmuch as in its opinion no questions of law arose out of the orders passed. The Board expressed the view that the two questions, namely, (1) whether the despatch of jute outside the State of Bihar was a sale within the meaning of the Act and (2) whether the purchases said to have been made on behalf of the two mills outside Bihar were liable to tax, were both concluded by findings of fact arrived at by the competent authorities on relevant materials in the record and were no longer open to challenge. The appellant then moved the High Court for requiring the Board to state a case on the questions of law which, according to the appellant, arose out of the orders passed with regard to the first two periods of assessment.

By an order dated November 17, 1954, the High Court dismissed the two applications made to it for requiring the Board to state a case to the High Court with regard to the said two periods. On a similar application made by the appellant to the High Court with regard to the third period of assessment, the High Court directed the Board of Revenue to state a case on the following question:

> "Whether the petitioner is entitled to claim a deduction on account of sale of mustard seed to the extent of Rs. 1,00,513-11-9 to Messrs. Panna Lal Binjraj as sales made to a registered dealer under the Schedule to Bihar Finance Act (no. 11) of 1949 read with the Bihar Sales Tax Act (Bihar Act XIX of 1947)."

By an order dated January 21, 1957 the High Court answered the question against the appellant. The finding of the High Court was thus expressed:

> "We are satisfied that the petitioner was not entitled to deduction of the amount of the price of mustard seed sold to Messrs. Panna Lal Binjraj for the purpose of manufacture because there is no mention in the certificate of registration granted to Messrs. Panna Lal Binjraj that mustard seed could be sold to them for the purpose of manufacture free of tax. As the conditions imposed by the proviso to section 5 have not been satisfied in this case, the Sales tax authorities rightly decided that deduction of the price of mustard seed sold to Messrs. Panna Lal Binjraj cannot be granted to the petitioner."

On February 17,1955, the appellant made an application to this Court for special leave to appeal from the orders of the Board of Revenue passed on the two applications in revision as respects the first two periods. This Court granted the leave prayed for by an order dated December 23, 1955. It should be emphasised here that the appellant prayed for and got leave to appeal from the orders of the Board dated August 20, 1953 and September 3, 1953 passed on the two applications in revision. No application was made for leave to appeal, nor was any leave granted, with regard to the subsequent orders made by the Board refusing to state a case or the orders of the High Court refusing the application of the appellant to direct the Board to state a case. With regard to the third period of assessment regarding which the High Court had directed the Board to state a case on a particular question of law and had actually answered it, the appellant again made an application for special leave to appeal on April 12, 1955, and this Court granted leave to the appellant by an order dated December 23, 1955, the leave granted being confined to the order of the Board of Revenue dated August 30, 1954, by which the Board decided that no questions of law arose for a reference to the High Court. Again, the appellant neither asked for nor obtained any leave to appeal from the subsequent orders of the High Court by which the High Court held that only one question of law arose out of the orders passed with regard to the third period of assessment and directed the Board to state a case on that question. Nor did the appellant move against the judgment and order of the High Court dated January 21, 1957, by which the High Court answered the one question referred to it adversely to the appellant.

On the facts stated above the question which has arisen is whether as a matter of practice of this Court, the appellant is enticed to be heard on merits in the three appeals when special leave was neither asked for nor granted in respect of the subsequent orders of the High Court relating to the assessments in question which have now become final between the parties thereto. In other words, the question is- whether the High Court should be allowed to be by-passed in the manner sought to be done by the appellant in these three appeals? The position is quite clear. With regard to two of the assessment orders the High Court held that no questions of law arose at all; with regard to the third assessment order the High Court held that only one question of law arose and it answered that question against the appellant. Can the appellant now ignore these orders of the High Court and ask us to consider on merits the orders of the Board of Revenue passed on the two revision applications for the first two periods and the orders of the Board in the reference case holding that no question of law arose out of the assessment order for the third period? This is the question, taken as a preliminary point, which we have to answer in these three appeals. The question has to be considered with regard to (a) the scope and ambit of Art. 136 of the Constitution; (b) the practice of this Court; and (c) the question must also be considered in the context of the scheme of the Act under which the assessments were made, appeals and revisions in respect thereof were heard, and the scope and effect of s. 25 of the Act under which the Board was asked to refer certain alleged questions of law to the High Court and the High Court was asked to direct the Board to state a case on the questions of law said to arise out of the assessment orders. It is necessary at this stage to dispose of an initial point taken on behalf of the appellant, before we go to a consideration of the main question. The point is this. On behalf of the appellant it has been submitted that leave having been granted by this Court, the preliminary objection taken to the hearing of the appeals should not be entertained now and the appeals should be heard on merits. We are unable to accept this as correct. In these cases leave was granted without hearing the respondents, and full materials in the

record were not available nor placed before the Court when leave was granted. In Baldota Brothers v. Libra Mining Works (1) this Court has pointed out that there is no distinction in the scope of the exercise of the power under Art. 136 at the stage of application for special leave and at the stage when the appeal is finally disposed of, and it is open to the Court to question the propriety of the leave granted even-at the time of the hearing of the appeal. This view is in accord with some of the earlier decisions of this Court to which a reference has been made in Baldota'8 case (1) A.I.R 1961 S.C. 100.

(supra). Therefore, it is open to us to consider now whether leave was properly granted in these appeals and whether the appellant is entitled to be heard on merits consistently with the practice of this Court in similar circumstances.

We proceed now to a consideration of the main question. As a preface to that discussion it is advisable to refer here to some of the provisions of the Act in order to bring out clearly the scheme and object of the Act. The charging section is s. 4 which says in effect that every dealer whose gross turnover exceeds a particular amount in a year shall be liable to pay tax under the Act on sales taking place in Bihar. Section 5 lays down the rate of tax. The assessment section is s. 13 which states the various circumstances in which the assessing authority may make the assessment. Section 24 of the Act provides for an appeal, revision or review of the assessment. Then come s. 25, the scheme of which is analogous to that of s. 66 of the Indian Income-tax Act, 1922. Under sub-s. (1) of s. 25, the dealer or Commissioner who is aggrieved by an order made by the Board under sub-s. (4) of s. 24 may by application in writing require the Board to refer to the High Court any question of law arising out of such an order; if for reason to be recorded in writing the Board refuses to make such reference, the applicant may under subs. (2) of s. 25 apply to the High Court against such refusal. If the High Court is not satisfied that such refusal was justified, it may require the Board to state a case and refer it to the High Court. When a case is referred to the High Court, it decides the question of law raised thereby by a judgment containing the grounds on which the decision is founded. The Board then disposes of the case according to the decision of the High Court. This in short is the scheme of s. 25. It is manifest that under this scheme questions of fact ate dealt with by the assessing authorities, subject to appeal and revision; but on questions of law the decision of the High Court is the decision according to which the case has to be disposed of Section 23 of the Act says that save as provided in s. 25, no assessment made and no order passed under the Act or the rules made thereunder by the Commissioner or any person appointed under s. 3 to assist him shall be called into question in any court and save as provided in s. 24, no appeal or application for revision or review shall lie against any such assessment or order. Clearly enough, ss. 23, 24 and 25 of the Act cannot override the provisions of the Constitution, nor affect the power of this Court under Art. 136 of the Constitution.' The decision of the High Court under s. 25 of the Act is undoubtedly subject to the power of this Court under Art. 136; so also the deter- mination or order of any of the assessing authorities which are tribunals within the meaning of Art. 136. That Article reads (omitting what is not relevant for our purpose):

> "Art. 136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court

or tribunal in the territory of India."

The words of the Article are very general and it is stated in express terms that this Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The question before us is not whether we have the power; undoubtedly, we have the power, but the question is whether in the circumstances under present consideration, it is a proper exercise of discretion to allow the appellant to have resort to the power of this Court under Art. 136. That question must be decided on the facts of each case, having regard to the practice of this Court and the limitations which this Court itself has laid down with regard to the exercise of its discretion under Art. 136. What are these limitations In Pritam Singh v. The State (1) this Court indicated the nature of these limitations in the following observations:

(1) [1950] S.C.R. 453.

> "On a careful examination of Article 136 along with the preceding Article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this Article. By virtue of this Article, we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that the Court should grant special leave to appeal only in those cases where special circumstances are shown to exist..... Generally speaking, this Court wilt not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against."

Pritam Singh's case (1) was a case of criminal appeal, but the same view was reiterated in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal (2), which was an income-tax case. It was there observed:

> "The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula.or rule."

We shall deal with this decision in greater detail a little later, when considering the question of the practice of this Court. It is enough to state here that this Court has uniformly held that there must be exceptional and special circumstances to justify the exercise of the discretion under Art. 136.

(1) [1950] S.C.R. 453.

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

Are there any such circumstances in the appeals before us? The answer must clearly be in the negative. Under the scheme of the Act which we had adverted to earlier, it is not open to the appellant to contest now the findings of fact arrived at by the assessing authorities. As to questions of law the appellant had gone up to the High Court, which held that in respect of two of the assessment orders no' questions of law. arose and in respect of the third assessment order, only one question of law arose and this question the High Court answered against the appellant. As we have pointed out earlier, the decision of the High Court in respect of all the three assessment orders was no doubt subject to an appeal to this Court if this Court gave special leave under Art. 136. The appellant did not, however, move this Court for special leave in respect of any of the orders passed by the High Court; those orders have Dow become final and binding on the parties thereto. What the appellant is seeking to do now is to by-pass the High Court by ignoring its orders. This the appellant cannot be allowed to do. Far from there being any special cir- cumstances in favour of the appellant, there are plenty of circumstances against him. The appellant is really trying to go behind the orders of the High Court by preferring these appeals directly from the orders of the Board of Revenue, and in one appeal from the orders of the Board refusing to make a reference to the High Court. The practice of this Court is also against the appellant. The earliest decision on this point is that of Dhakeswari Cotton Mills Ltd.(1) and learned Counsel for the appellant has relied on it in support of his argument that this Court had in some previous cases interfered with an-order of the tribunal in exercise of its power under Art. 136 even though the assessee had not moved against the order of the High Court. In Dhakeswari's case (1) what happened was this. The assessee having exhausted all his remedies under the Income-tax Act, 1922, including that under s. 66(2) for the issue of a mandamus to the Tribunal, made an (1) [1955] 1 S.C.R. 941.

application to this Court for special leave to appeal against the order of the tribunal; this Court granted special leave and in the appeal filed in pursuance thereof quashed the order of the Tribunal. But the decision in Dhakeswari's case (1) must be read in the light of the special circumstances which existed there. It was found by this Court that the tribunal had violated certain fundamental rules of just ice in reaching its conclusions, and that the assessee had not had a fair hearing; therefore, it was held that it was a fit case for the exercise of the power under Art. 136. The decision proceeded really on the basis that the principles of natural justice had been violated and there was in reality no fair trial. In the appeals before us no such or similar ground is alleged so as to attract the exercise of our power under Art. 136. In Moti Ram V. Commissioner of Income-tax (2) the appellant did not make any application under s. 66(2) of the Income- tax Act, 1922, but obtained special leave of this Court in respect of the order of the Tribunal in the special circumstance that his property was attached and proceeded against for the recovery of the tax. The question of the propriety of the grant of special leave was not considered, but the appeal was dismissed on merits.

The decision in Jogta Coal Co. Ltd. v. Commissioner of Income-tax, West Bengal (3) which is a decision on its own facts, has been open to much debate. The question which fell for consideration there related to depreciation under s. 10(2)(vi) of the Indian Income-tax Act, 1922, namely, the

amount on which the appellant was entitled to calculate deduction allowance for purposes of depreciation. The Income-tax Officer made an estimate which was accepted by the Appellate Assistant Commissioner. The matter was taken to the Appellate Tribunal which made its own estimate. An application under s. 66(1) was rejected and an attempt to move the High Court under s. 66(2) also proved unsuccessful. Then, this Court was moved for special leave to appeal from the orders of the (1) [1955]1 S.C R. 941. (2) [1958]34 I.T.R. 646, (3) [1959]36 I.T.R. 521.

Tribunal, and the appeals were brought with special leave granted by this Court. This Court remitted the case to the Tribunal and directed the latter to refer two questions of law to the High Court under s. 66(2). It is a little difficult to see how on an appeal from the appellate orders of the Tribunal, a direction under s. 66(2) could be made. Perhaps, this fact was not noticed. In any view, the decision cannot be taken as settling the practice of this Court in favour of the appellant.

In Omar Salay Mohammed Sait v. Commissioner of Income-tax, Madras(1) the Tribunal based its findings on suspicions, conjectures or surmises and the principle laid down in Dhakeswari's case (2) was followed. The decision in Sardar Baldev Singh v. Commissioner of Income-tax, Delhi & Ajmer(1) was also a decision special to its own facts. There the application to the Tribunal was barred by time-in circumstances which were-beyond the control of the appellant. The Tribunal dismissed the application for a reference on the ground of limitation and the High Court had no power to extend the time. In these circumstances the appellant asked for special leave and condonation of delay. Special leave was granted by condoning the delay. More in point is the decision in V. Govindarajulu Mudaliar v. The Commissioner of Income-tax, Hyderabad (4) which was concerned with appeals from the decision of the Tribunal by special leave, after an application under s. 66(2) had been dismissed by the High Court. This Court then observed:

> " We must mention that against the order of the Tribunal the appellant applied for reference to the High Court under s. 66(2) of the Indian Income-tax Act and the learned Judges of the High Court dismissed that application. No appeal has been preferred against that at all. The present appeal is against the decision of the Tribunal itself. It is no doubt true that this Court has decided in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal, 1955(1) S.C.R. 941, that an appeal (1) [1959]37 I.T.R. 151.
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> (3) [1960] 40 I.T.R. 605.
>
> (2) [1955] 1 S.C.R. 941.
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> (4) A.I.R. 1959 S.C. 248, lies under Art. 136 of the Constitution of India to this Court against a decision of the Appellate Tribunal under the Indian Income-tax Act. But seeing that in this case the appellant had moved the High Court and a decision has been pronounced adverse to him and this has become final, obviously it would not be open to him to question the correctness of the decision of the Tribunal on grounds which might have been taken in an appeal against the judgment of the High Court."

In Messrs Chimmonlall Rameshwarlal v. Commissioner Income- tax (Central), Calcutta(1) the facts were these. Four appeals were filed with special leave granted by this Court under Art. 136 which were directed against the orders of the Appellate Tribunal refusing to state a case on an application made to it under s. 66(1). No appeals were filed against the orders of the Appellate Tribunal under s. 33(4), nor against the orders of the High Court under s. 66(2)a position which is similar to the one in the appeal before us relating to the assessment for the third period. In these circumstances this Court observed:

> "In the present case the circumstance of very great materiality and significance which stares the appellants in the face is that in regard to this very point there is a considered judgment of the High Court delivered by it on the applications made by the appellants to it under section 66(2) of the Act which came to the conclusion that no question of law arose out of the order of the Tribunal, which judgment stands, not having been appealed against in any manner whatever by the appellants. The result of our going into these appeals before us on the merits would be either to confirm the judgment which has been pronounced by the High Court or to differ from it. If we did the former, the appellants would be out of Court; if, however, perchance we came to the contrary conclusion and accepted the latter view, namely, that the High Court was wrong in not granting the applications of the appellants under section 66(2) of the Act there would be two (1) A.I.R. 1960 S.C. 280, contrary decisions, one by the High Court and the other by us and we would be in effect, though not by proper procedure to be adopted by the appellants in that behalf, setting aside the judgment of the High Court. This is an eventuality which we cannot view with equanimity. It is contrary to all notions of comings of Courts and even though we are a Court which could in certain events set aside and overrule the decisions of the High Court concerned, we cannot by-pass the normal procedure which is to be adopted for this purpose and achieve the result indirectly in the manner suggested by the appellants. We, therefore, think that in the circumstances here it would be inappropriate on our part to enter upon an adjudication of these appeals on merits. We would, therefore, dismiss these appeals without anything more."

We think that these observations apply with equal force, here.

A careful examination of the previous decisions of this Court shows that whenever the question was considered, this Court said that save in exceptional and special circumstances such as were found in Dhakeswari's case (1) or Baldev Singh's case (2) it would not exercise its power under Art. 136 in such a way as to by-pass the High Court and ignore the latter's decision, a decision which has become final and binding on the parties thereto, by entertaining appeals directly from the orders of a tribunal. Such exercise of power would be particularly inadvisable in a case where the result may be a conflict of decisions of two courts of competent jurisdiction, a conflict which is not contemplated by ss. 23, 24 and 25 of the Act. On the contrary, the object of these sections is to avoid a conflict by making the decision of the assessing authorities final on questions of fact subject to appeal, revision or review as provided for by s. 24 and the decision of the High Court subject to an appeal to this Court, final on questions of law under s. 25 of the Act. To ignore the decision of the

High Court on a question of law would really nullify the statutory provisions of s. 25 of the Act.

(1) [1955] 1 S.C.R. 941. (2) [1960] 40 I.T.R. 605;

It remains now to consider one last argument urged on behalf of the appellant. Learned Counsel for the appellant has drawn our attention to Art. 133 of the Constitution and has pointed out that when the High Court refuses a certificate under Art. 133, it is open to this Court to grant special leave to appeal (and this Court has often granted such special leave) from the main decision of the High Court irrespective of the orders of the High Court refusing such a certificate. It is argued that the same analogy should apply, and in spite of the orders of the High Court under s. 25 of the Act, this Court may and should grant special leave to appeal from the orders of the Tribunal. We do not think that the analogy is apposite. Firstly, in dealing with an application under Art. 133 the High Court merely considers whether a certificate of fitness should be given in respect of its own decision; in such a case it does not itself decide any question of law such as is contemplated by s. 25 of the Act. Secondly, there is no likelihood of any conflict of decisions of the kind referred to earlier arising out of an order under Art. 133, when special leave is granted to appeal from the main decision of the High Court. The question of two decisions by two different courts or tribunals does not arise, and none of them is by- passed by the grant of such special leave. Moreover' as we have said earlier the question is not one of the power of this Court; but the question is what is the proper exercise of discretion in granting special leave under Art. 136 of the Constitution.

In these appeals we have reached the conclusion, for reasons already stated, that the appellant is not entitled to ask us to exercise our power under Art. 136. There are no special circumstances justifying the exercise of such power; on the contrary the circumstances are such that it would be wrong both on principle and authority to allow the appellant to by-pass the High Court by ignoring its orders. In our view, special leave was not properly given in these cases and we would accordingly dismiss the appeals with costs, without going into merits. There will be one hearing fee. Appeals dismissed.