

CIT v. Ishwarlal Bhagwandas, (1966) 1 SCR 190, Court distinguished between civil proceedings and criminal proceedings in the context of Article 132 of the Constitution thus:

“... The expression “civil proceeding” is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation laws of the State. The primary object of a taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the tax-payer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of the tax-payer are infringed in a manner not warranted by the statute, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil proceeding. The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc.” (1966) 1 SCR 190, at pages 196-197)

“A large number of cases have arisen before the High Courts in India in which conflicting views about the meaning of the expression “civil proceeding” were pressed. In some cases it was held that the expression “civil proceeding” excludes a proceeding instituted in the High Court for the issue of a writ whatever may be the nature of the right infringed and the relief claimed in other cases it has been held that a proceeding resulting from an application for a writ under Article 226 of the Constitution may in certain cases be deemed to be a “civil proceeding”, if the claim made, the right infringed and the relief sought warrant that inference: in still another set of cases it has been held that even if a proceeding commenced by a petition for a writ be generally categorised as a civil proceeding, where the jurisdiction which the High Court exercises relates to revenue, the proceeding is not civil. A perusal of the reasons given in the cases prompt the following

observations. There are two preliminary conditions to the exercise of the power to grant certificate: (a) there must be a judgment, decree or final order, and that judgment, decree or final order must be made in a civil proceeding. An advisory opinion in a tax reference may not be appealed from with certificate under Article 133 because the opinion is not a judgment, decree or final order, and (b) a proceeding does not cease to be civil, when relief is claimed for enforcement of civil rights merely because the proceeding is not tried as a civil suit. In a large majority of the cases in which the jurisdiction of the High Court to certify a case under Article 133(1) was negatived it appears to have been assumed that the expression “other proceeding” used in Article 132 of the Constitution is or includes a proceeding of the nature of a revenue proceeding, and therefore the expression “civil proceeding” in Article 133(1) does not include a revenue proceeding. This assumption for reasons already set out is erroneous.” ((1966) 1 SCR 190, at page 199)