

---

**(1975) 01 CAL CK 0027**

**In the Calcutta High Court**

**Case No : Income-tax Reference No. 122 of 1970**

Charki Mica Mining Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

---

**Date of Decision : 17-01-1975**

**Acts Referred:**

Income Tax Act, 1922 — Section 23, 30(1), 30(2)

**Citation : (1978) 111 ITR 193**

**Hon'ble Judges : S.C. Deb, J; R.N. Pyne, J**

**Bench : Division Bench**

**Advocate : K. Ray and R.N. Dutta, for the Appellant; A.K. Sen Gupta and P.K. Majumdar, for the Respondent**

---

## **Judgement**

Deb, J.—The following questions were framed by this court u/s 66(2) of the Indian Income Tax Act, 1922 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the period of limitation was to be computed from January 14, 1965, and as such the appeal was not within time?"

2. The assessment of the case relates to the assessment for the year 1961-62. The assessment order was passed by the Income Tax Officer on December 23, 1964. The assessee received the notice of demand on January 13, 1965, and filed the appeal on February 15, 1965, before the Appellate Assistant Commissioner and before whom it was contended on behalf of the assessee that the appeal was not out of time, for, according to the assessee, the notice of demand was received on January 14, 1965 and not on the 13th January, 1965. But this contention was not accepted by the Appellate Assistant Commissioner, who rejected the appeal as filed beyond time.

3. The assessee then preferred an appeal before the Tribunal and it was contended on its behalf that the notice of demand was received on January 14, 1965, but not the assessment order, which was received on January 16, 1965, by

the assessee and, accordingly, the appeal was filed within time and should have been entertained by the Appellate Assistant Commissioner. The Tribunal observed that 30 days for filing that appeal was to be computed from the date on which the notice of demand was received by the assessee and not from the alleged date on which the assessment order was received. The Tribunal, further observing that the plea that the assessment order was received on January 16, 1965, was not taken by the assessee before the Appellate Assistant Commissioner and having been taken for the first time before the Tribunal, did not allow the assessee to agitate it and dismissed the said appeal.

4. An application made by the assessee u/s 66(1) of the Act was disallowed by the Tribunal and thereafter this court framed the above questions and not the questions that were sought to be raised by the assessee.

5. Mr. K. Ray, the learned counsel for the assessee, contended before us that the assessment order was received by the assessee on January 16, 1965, and, therefore, the appeal was not out of time for, according to him, Section 67A of the Indian Income Tax Act, 1922, says that in computing the period of limitation prescribed for an appeal under the Act, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded. His bone of contention is that since the assessee did not know the contents of the assessment order, it was not possible for the assessee to prefer the said appeal until its receipt and, therefore, the time prescribed u/s 30(2) of the Act did not begin to run until the assessment order was actually received by the assessee. His further contention is that the expression "the time requisite for obtaining a copy of such order" used in Section 67A of the Act does not enjoin the assessee to make an application to the Income Tax Officer for obtaining a copy of the assessment order and, therefore, the prescribed period of limitation for filing the appeal should be computed from the date of receipt of the assessment order by the assessee and not from the date of receipt of notice of demand relating to the assessment in view of the expression "ordinarily" used in Section 30(2) of the Act which expression necessarily excludes the extraordinary circumstances preventing the assessee from preferring the appeal within 30 days prescribed by the section.

6. It is not necessary for us to refer to the contentions made by Mr. Sen Gupta, the learned counsel for the revenue, for we are unable to accept the contentions of Mr. Ray.

7. The Tribunal has expressly refused to Investigate into the question, namely, that the assessee did not receive the assessment order along with the demand notice including the alleged date of receipt of the assessment order by the assessee and, therefore, we cannot entertain the contentions of Mr. Ray based upon the date of receipt of assessment order, for the aforesaid refusal of the Tribunal has not been challenged as perverse by the assessee before me.

8. In these circumstances, we must go by the two dates as stated in the

statement of case, namely, either the 13th or the 14th January, 1965, being the date on which the notice of demand was received by the assessee, and the 15th February, 1965, being the date on which the appeal was filed by the assessee before the Appellate Assistant Commissioner.

9. Section 30(1) of the Act gives a statutory right of appeal to the assessee relating to the amount assessed u/s 23 of the Act. Section 30(2) provides that such appeal shall ordinarily be presented within 30 days of the receipt of the notice of demand by the assessee relating to the assessment. Hence, prima facie, the appeal filed by the assessee before the Appellate Assistant Commissioner was time-barred, for the starting point of limitation was 30 days from the receipt of the notice of demand relating to the assessment by the assessee.

10. The contention of Mr. Ray, however, is that the expression "ordinarily" used in Section 30(2) of the Act is an elastic one and in a case of this nature the time will not begin to run until the receipt of the assessment order by the assessee, for the appeal is directed against the assessment order and not against the demand notice.

11. To read this section in the way Mr. Ray wants us to read it is to re-write it and we are unable to do so. All appeals shall be filed within 30 days from, the receipt of the notice of demand relating to the assessment and, if under special circumstances, it cannot be done within the prescribed time, this section has empowered the Appellate Assistant Commissioner to condone the delay in filing it after the prescribed period of limitation. Hence, in our opinion, the expression "ordinarily" should be read in the light we have indicated, and, therefore, we are not impressed by the contentions of Mr. Ray.

12. Mr. Ray has also placed reliance on a Manual published by the Board of Revenue entitled The Notes on the Indian Income Tax Act, 1922, the rules made under that Act and other statutory provisions and orders concerned with the imposition of Income Tax as corrected up to 30th September, 1949. He drew our attention to the following passage appearing at page 480 of that manual:

"A copy of the assessment order would be supplied to the assessee along with the demand notice. It will, of course, be free of cost. In the cities of Bombay and Calcutta if the assessment order is not typed at the very outset, manuscript carbon copy of the assessment order would be sent along with the demand notice only in cases where the total income assessed exceeds Rs. 5,000. In cases in Calcutta and Bombay in which the total income does not exceed Rs. 5,000, a copy would be supplied to the assessee free of cost on application, if it is applied for within a year of the order."

13. The above statements, according to Mr. Ray, are instructions to the Income Tax Officers by the Board of Revenue and as such were binding on him. But it is not clear to us whether they are notes or directions or instructions to the Income Tax Officer or merely a guidance for him and, therefore, we cannot place any

reliance on it. Reliance on it was placed by Mr. Ray in support of his contention that it was incumbent on the Income Tax Officer to send the demand notice accompanied by the assessment order and the Income Tax Officer not having done so in this case had committed a tort, and, hence, that tort did not make the assessment order effective until it was received by the assessee. But, as already stated, the Tribunal did not allow the assessee to raise the contention, namely, that the assessment order was not received along with the notice of demand by the assessee and, therefore, we are unable to entertain this contention of Mr. Ray. Moreover, no tort was committed by the Income Tax Officer and that apart, in our opinion, there is no merit in the contention of Mr. Ray, for Rule 20 of the Income Tax Rules, 1922, and the then Rule 15 of the Income Tax Rules, 1962, provide that the Income Tax Officer shall send the "assessment form" along with the notice of demand and it is not the case of the assessee that no such form was sent along with the notice of demand and, therefore, the contention of Mr. Ray must fail.

14. The scope and ambit of the question framed by this court in this case is a narrow one in view of the expression "as such" used therein. Therefore, we are concerned with questions, namely, as to whether the period of limitation should begin to run from January 14, 1965, if so, whether the instant appeal was filed out of time. The case of the assessee is that the notice of demand was received by the assessee on January 14, 1965, and the appeal was filed before the Appellate Assistant Commissioner on February 16, 1965, and, therefore, it must be held it was time-barred inasmuch as we cannot take any notice of the alleged fact, namely, that the assessment order was received by the assessee on the 16th January, 1965, and not along with the demand notice for the reasons already stated.

15. In this view of the matter, our answer to the question is in the affirmative and in favour of the revenue. In the facts and circumstances of the case, there will be no order as to costs.

Pyne, J.

16. I agree.