(2006) 09 AHC CK 0309

In the Allahabad High Court

Commissioner of Income Tax and Another APPELLANT

Vs

Ram Kishan Gupta RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

Income Tax Act, 1961 — Section 260A
Limitation Act, 1963 — Section 5

Citation : (2006) 09 AHC CK 0309

Hon'ble Judges : Vikram Nath, J;R.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri A. N. Mahajan, learned standing counsel appearing for the revenue. No one has put in appearance on behalf of the respondent-assessee, despite service having been effected as per the affidavit of service 30-3-2000.

2. The revenue has filed this appeal u/s 260A of the Income Tax Act, 1961, against the order dated 26-7-1999, passed by the Income Tax Appellate Tribunal (B Bench), Allahabad, whereby the appeal of the revenue against the order of the Commissioner (Appeals), Kanpur, dated 18-9-1992, has been dismissed in limine on the ground of delay.

3. From the perusal of the impugned order of the Tribunal, it is clear that the last date for filing in appeal was 14-12-1992, whereas the appeal was filed on 19-12-1992, that is, five days beyond time. The delay condonation application clearly mentions that there was curfew in the city of Kanpur from 6-12-1992 to 16-12-1992, and therefore, the authorisation could be obtained from the Commissioner of Income Tax on 17-12-1992, and soon thereafter, the appeal was filed on 19-12-1992. The Tribunal has refused to condone the delay on the ground that the imposition of curfew could have been a ground for condoning the delay for filing the appeal, but it could not be a ground for authorisation being delayed and granted beyond the time limit which expired on 14-12-1992.

4. In our opinion, the observation of the Tribunal is too pedantic and also not correct. Once the curfew was imposed prior to the date on which the limitation was expiring, the delay may have been caused in taking the authorisation also, as it is well known that during the imposition of curfew, the movement is completely restricted and there could have been genuine difficulty in getting authorisation. That apart, there was only a delay of five days and it is well-settled that the words "sufficient cause" used in Section 5 of the Limitation Act for condoning the delay is to be liberally construed. Reliance in this regard is placed on the following decision of the Apex Court.

(i) Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and

(ii) The State of West Bengal Vs. The Administrator, Howrah Municipality and Others,

5. In view of the aforesaid discussions, we are of the view that the sufficient cause had been brought on record to condone the delay of five days. In the circumstances, the impugned judgment and order dated 26-7-1999, is set aside. The delay in filing the appeal before the Tribunal is condoned and the Tribunal is directed to decide the appeal on the merits in accordance with law. Since the appeal was filed in the year 1992, it would be appropriate that the Tribunal expedites the hearing of the appeal and decide the same within a period of three months from the date of production of certified copy of this order.

6. The appeal stands allowed as above, however in the facts of the case, there shall be no order as to costs.

