
(1999) 01 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 68 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Ram Mohan Kabra

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (2002) 257 ITR 773

Hon'ble Judges : Swatanter Kumar, J;N.K. Aggarwal, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The Income Tax Appellate Tribunal, Amritsar, vide its order dated May 19, 1998, declined to refer the following question as a question of law to the High Court in exercise of its powers u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). In fact the Tribunal held that the order of the authority below in declining the condonation of delay was fully justified. The question of law as formulated by the Commissioner of Income Tax, Jalandhar, for reference, reads as under :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the appeal of the Revenue in not condoning the delay of only five days in filing the appeal when there was sufficient cause and bona fide human error for which an affidavit was filed by the Assessing Officer covering the version of the receipt clerk for putting up the file late, and, insisting upon to file the statement on affidavit on receipt clerk, especially when the Assessing Officer had already filed his affidavit ?"

2. It is contended by learned counsel for the petitioner that discretion to condone or not to condone the delay would always be a question of law. We are unable to agree with the view of learned counsel for the petitioner that discretion to

condone or not to condone the delay would always be a question of law. We are unable to agree with the view. Learned counsel for the petitioner relied upon the judgment in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . At the outset we must notice that the said judgment of the Supreme Court of India has no application to the facts of the present case. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, the Supreme Court in India made the observations with regard to condonation of delay where a private or a Government body is an applicant in that regard. The Supreme Court has made no observation in relation to whether such a question would be a question of law or a question of fact. In fact, that judgment is not dealing with the provisions of Section 256 of the Act.

3. The provisions relating to prescription of limitation in every statute must not be construed so liberally that it would have the effect of taking away the benefit accruing to the other party in a mechanical manner. Where the Legislature spells out a period of limitation and provides for power to condone the delay as well, there such delay can be condoned only for sufficient and good reasons supported by cogent and proper evidence. Now it is a settled principle of law that the provisions relating to specified period of limitation must be applied with their rigour and effective consequences.

4. In this regard, reference can be made to the latest law in the case of P.K. Ramachandran Vs. State of Kerala and Another, . The relevant portion reads as under (page 2277) :

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court, was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs."

5. Once the concerned authority applies its mind and declines to condone the delay in filing the appeal for good and appropriate reasons, in that event it cannot give rise to a question of law for determination.

6. It is clear from the impugned order that the authorities concerned have given three reasons for not condoning the delay.

(a) Affidavit of person who was dealing with the file, was not filed.

(b) The relevant records were not produced before the authorities concerned.

(c) Affidavit filed on behalf of the applicant was based on hearsay and no facts were true to the knowledge of the person who filed the affidavit in support of the application for condonation of delay.

7. It will be appropriate to refer to the findings recorded by the learned Tribunal in the impugned order, which reads as under :

"It is quite clear that the learned Departmental Representative himself asked time to produce the relevant affidavit of the relevant person, i.e., "receipt clerk". Even at the time of reference application no such "affidavit" is available. The Income Tax Appellate Tribunal has given finding of fact and as such no question of law arises out of the finding of the Income Tax Appellate Tribunal. The reference application filed by the Revenue is accordingly dismissed."

8. The Supreme Court of India in the case of Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay, held as under (857 of AIR 1957 SC) :

"A finding on a question of fact is open to attack u/s 66(1) as erroneous in law if there is no evidence to support it or if it is perverse."

9. A Full Bench of the Orissa High Court, in the case of Brajabandhu Nanda Vs. Commissioner of Income Tax, considering a somewhat similar question where the appeal was barred by time and reference of the question was declined, held as under (headnote) :

"That the questions referred were not questions of law but questions of fact since it was a matter of discretion for the Tribunal to condone delay for sufficient cause on the facts and circumstances of each case."

10. The consistent view is that such question would be a question of fact simpliciter and would not be covered under the provisions of Section 256 of the Act unless such exercise of discretion or conclusion arrived at was perverse or so illogical that no reasonable person could come to such a conclusion. The authorities have exercised their discretion and we find nothing perverse in the impugned orders. Specific reasons have been given in the order which are not only logical but even reflect the conduct of the appellant before the authorities in not producing the record in spite of seeking time.

11. The authorities which are exercising quasi-judicial powers in discharge of their statutory functions, inevitably have to be vested with some element of discretion in exercise of such powers. Merely because another view was possible or permissible on the same facts and circumstances, per se would not make such controversy a "question of law". So far as such decision of the authority is in conformity to the principle of law and is apparently a prudent one, the court would normally be reluctant to interfere in such exercise of discretion. We are not able to appreciate the contention of learned counsel for the petitioner that the Tribunal has applied wrong principles of law or that it has relied upon incorrect principles of law regulating the controversy in issue (refer Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah,).

12. We are also not in a position to agree with the contention raised on behalf of the petitioner that the afore-given three reasons amount to palpably erroneous error of law in exercise of discretion by the authorities concerned. On the

contrary, we have already held that the reasons stated for declining the reference are well in consonance with the settled canons of law governing the subject.

13. Having cogitated over the matter and for the reasons aforestated, we do not find any error of jurisdiction or otherwise in the impugned order. We are constrained to hold that the view of the Tribunal in declining the reference to this court is fully justified and thus, we decline to issue any direction to the Income Tax Appellate Tribunal, Amritsar, to state and refer the aforesaid question, as question of law, to this court in exercise of its power u/s 256 of the Act.

14. With the above observations, this petition is dismissed.