**(1973) 08 AHC CK 0037**

**In the Allahabad High Court**

**Case No :** Sales Tax Reference No. 474 of 1971

Commissioner of Sales Tax APPELLANT

Vs

Niranjan Lal and Co. RESPONDENT

**Date of Decision :** 30-08-1973

**Acts Referred:**
Limitation Act, 1963 — Section 5, 9

**Citation :** (1974) 34 STC 140

**Hon'ble Judges :** R.L. Gulati, J;H.N. Seth, J

**Bench :** Division Bench

# Judgement

R.L. Gulati, J.—This is a reference u/s 11(3) of the U.P. Sales Tax Act by the Commissioner of Sales Tax, U.P., Lucknow.

2. The assessee was aggrieved with the assessment order for the year 1966-67. The assessment order was passed on 5th October, 1967. The period for filing the appeal against the assessment order expired on 4th January, 1968. The appeal was, however, filed on 30th January, 1968. As the appeal was filed beyond time, an application was made by the assessee for condonation of delay. The appellate authority relying upon the decision of this Court in Janta Cycle and Motor Mart v. Assistant Commissioner (Judicial), Sales Tax, Kanpur [1968] 22 S.T.C. 94, held that, the appeal was barred by time and that although the delay in filing the appeal could be condoned but the delay in depositing the admitted tax within the time of limitation could not be condoned. The assessee went up in revision. The Judge (Revisions), Sales Tax, took the view that the decision in Janta Cycle and Motor Mart, Kanpur Vs. Asst. Commissioner (J), III Sales Tax Kanpur Range, Kanpur and Another, was not applicable inasmuch as in that case the appeal had been filed within time, but only the payment of admitted tax was made beyond time; while, in the present case, both the appeal and the payment of admitted tax were beyond time. In his opinion, the appellate authority could condone the delay if he was satisfied with the explanation of the assessee. He, accordingly, remanded the case to the Assistant Commissioner (Judicial), Sales Tax. The

Commissioner of Sales Tax is aggrieved and, at his instance, the revising authority has submitted the following question of law for the opinion of this Court:

Whether, under the circumstances of the case, the delay in depositing the admitted tax within the prescribed time for filing the appeal u/s 9 of the U.P. Sales Tax Act stands automatically condoned, if the admitted tax was deposited before the filing of the appeal and the delay in filing the appeal itself was condoned u/s 5 of the Limitation Act.

3. An appeal u/s 9 has to be filed within 30 days of the date of the service of the copy of the order or notice of assessment and under the first proviso "no appeal against an assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due, or of such installments thereof as may have become payable". Sub-section (6) of Section 9 provides :

Section 5 of the Limitation Act, 1963, shall apply to appeals under this Act.

4. The contention of the department is that even though the appellate authority may condone the delay in filing the appeal, yet it cannot condone the delay in depositing the admitted tax, as required by the proviso quoted above. In our opinion, the point raised is completely covered by the decision of the Supreme Court in Lalta Prasad Khinni Lal Vs. The Asstt. Commissioner (Judl.) Sales Tax, Kanpur and Another, , where it has been held that an appeal becomes a valid appeal only when the proof of the payment of admitted tax is furnished. Thus, the ground on which the revising authority has distinguished the case of Janta Cycle and Motor Mart, Kanpur Vs. Asst. Commissioner (J), III Sales Tax Kanpur Range, Kanpur and Another, is not valid. The fact, however, remains that an appeal is to be treated to be barred by time either when the appeal is filed within time and the admitted tax is deposited beyond time or when both the appeal and the admitted tax are beyond time. The deposit of the admitted tax is not a separate requirement, but it is only a condition precedent for filing an appeal, so that if this condition is not satisfied the appeal is not proper. The appeal becomes a valid appeal only when the admitted tax is deposited. The decision of this Court in Janta Cycle and Motor Mart, Kanpur Vs. Asst. Commissioner (J), III Sales Tax Kanpur Range, Kanpur and Another, to the effect that delay could be condoned in filing the appeal but not in depositing the admitted tax is no longer good law, the same having been overruled in the case of Lalta Prasad Khinni Lal Vs. The Asstt. Commissioner (Judl.) Sales Tax, Kanpur and Another, . The effect of the decision of the Supreme Court is that Sub-section (6) of Section 9 applies to a case where the memorandum of appeal is filed within time, but, the admitted tax is deposited beyond time as well as to a case where the appeal and the admitted tax are both beyond time. Present is a case of latter type and if there is sufficient cause for condoning the delay in filing the appeal, it would automatically be a sufficient cause for non-deposit of tax. Once the delay in filing the appeal is condoned, the delay in depositing the admitted tax would automatically stand condoned.

5. We, accordingly, answer the question in the affirmative in favour of the assessee and against the department. The assessee is entitled to costs, which we assess at Rs. 100.

 