(1931) 02 AHC CK 0020

In the Allahabad High Court

In Re: An application by Gulabchand Choteylal and Others

Date of Decision : 26-02-1931

Acts Referred:
Income Tax Act, 1961 — Section 66, 66(3)
Limitation Act, 1963 — Section 12

Citation : AIR 1931 All 673 : (1931) ILR (All) 684

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is an application by an assessee to the High Court asking that the Commissioner of Income Tax should be required to state a case u/s 66, Income Tax. The learned Government Advocate has taken a preliminary objection that the application is time barred. Section 66(3), Income Tax Act, states:

If on any application being made under Sub-section (2) the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal, apply to the High Court.

2. Now it is admitted that the Commissioner refused to state a case on 19th April 1930 and that the notice of refusal was communicated to the assessee on 3rd May 1930. The application to the High Court was made on 12th November 1930 and was not accompanied by any copies of the order of the Commissioner or of the Assistant Commissioner or of the Income Tax Officer. u/s 67 (a):

In computing the period of limitation prescribed for an appeal under this Act or for an application u/s 66, the day on which the order complained of was made, and the time required for obtaining a copy of such order shall be excluded.

3. It is admitted that application for a copy of the order of the Income Tax Commissioner was not made until 22nd November 1930, that is, after the application u/s 66 (3) was filed in this Court. Accordingly, the period for obtaining a copy of the order of the Commissioner cannot be applied to extend the period

of limitation. But it is contended that two other periods should be used for extension of limitation, namely from 26th to 29th May 1930, a period of four days occupied in obtaining a copy of the order of the Income Tax Officer, and from 14th to 18th March 1930, a period of five days, in obtaining a copy of the order of the Assistant Commissioner on appeal. If these two periods of nine days in all were added, it is true that the application to this Court would be within time. The question therefore is whethere any rule exists under which these two periods can be used to extend the period of limitation. Section 67 (a), Income Tax Act, refers merely to the time required for obtaining a copy of "such order", that is, for the order which is the subject of a reference u/s 66 (3). Accordingly, it is clear that this section does not authorize the extension of the period of limitation by the time required for obtaining the other two orders in question. Reference was also made to the Limitation Act, Section 12, but that does not apply to a proceeding u/s 66 (3), Income Tax Act.

4. It was also argued by learned Counsel that there would be some analogy between the case of a second appeal being filed in the High Court under the Civil Procedure Code. If that be so, then the analogy is unfortunate for the applicant, because it has been held by a Full Bench of this Court in Narsingh Sahai v. Sheo Prasad [1918] 40 All.1 that although a rule of this Court with reference to. the presentation of an appeal from an appellate decree required that the memorandum of appeal should be accompanied hot only by a copy of the decree or order, but where it exists, a copy of the judgment of the Court of first instance, still this rule did. not connote that the appellant had a right to exclude from the period of limitation for filing his appeal, the time requisite for obtaining a copy of the judgment of the Court of first instance.

5. It is a fact that within the rules framed for procedure of this Court in regard to Income Tax references, Rule 1 states that where an a application is made u/s 66 (3), Income Tax Act, there should be copies of the order of the Income Tax Officer, the Assistant Commissioner of Income Tax and the Commissioner of Income Tax disposing of the case. But the mere fact that these orders are required does not connote that the applicant has a right to extend the period of limitation by the period required for obtaining orders other than those of the Commissioner of Income Tax under re-reference.

6. Under these circumstances, we consider that this application is time barred and we therefore dismiss it with costs. We assess the fee of the Government Advocate at Rs. 100 and allow him one month for the filing of the certificate.

