

(1991) 01 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1493 of 1989

Kuldeep Singh

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 254, 254(2)

Citation : (1991) 190 ITR 52

Hon'ble Judges : B.P. Jeevan Reddy, C.J.; R.A. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is directed against an order of the Income Tax Appellate Tribunal, dated May 28, 1987, and certain other subsequent orders.

2. Briefly, the facts relevant are the following : a notice u/s 148 of the Income Tax Act (hereinafter referred to as "the Act") was issued to the petitioner for the assessment year 1972-73 and an assessment made. Against the assessment so made, the petitioner filed an appeal which was dismissed by the Appellate Assistant Commissioner. The appellate order was received by the petitioner on September 15, 1983. The appeal before the Tribunal ought to have been filed on or before November 14, 1983. The petitioner, however, despatched his appeal papers by post on November 11, 1983 which were received by the Tribunal on November 24, 1983. In other words, the appeal was barred by seven days.

3. On April 24, 1986, the Tribunal issued a notice to the petitioner informing him that his appeal was barred by time. Thereupon, the petitioner says, he filed an application for condoning the delay in filing the appeal on June 18, 1986. This fact is of course disputed, as we shall mention presently. Be that as it may, the date of hearing of the appeal was fixed for May 19, 1987, of which due notice was given to the petitioner. On May 18, 1987, the petitioner says, he sent a

telegram seeking an adjournment. Admittedly, this telegram did not reach the Tribunal on May 19, 1987. The appeal was, accordingly, dismissed as barred by time, by an order dated May 28, 1987.

4. The petitioner filed an application u/s 254(2) of the Act raising two contentions, namely, (1) that he had sent a telegram on May 18, 1987, seeking an adjournment and he was under the impression that the adjournment would be granted and (2) that he had also filed an application for condoning the delay as far back as on June 18, 1986 and that the Tribunal erred in disposing of the appeal without taking notice of the said application. This application (under Section 254(2) of the Act) was dismissed by the Tribunal by its order dated September 10, 1987. It found firstly that the telegram said to have been sent by the petitioner was not received by it on the date of hearing. So far as the second contention urged in the application u/s 254(2) of the Act is concerned, the Tribunal observed that "there is no reliable evidence to establish that this application was sent to the office of the Tribunal and the same was not placed before the Bench at the time of hearing of the appeals". Dealing with the postal receipt and acknowledgment slip, relied upon by the petitioner in support of his case, the Tribunal observed that there is nothing to show that they pertained to the case of the petitioner.

5. The petitioner says that notwithstanding the said rejection order, he filed more than one application consecutively u/s 254(2) of the Act reiterating his contentions all of which, he says, were rejected without posting them before the Tribunal.

6. Be that as it may, the position is that, at no stage, has the petitioner filed an application u/s 256(2) of the Act either against the order of the Tribunal dated May 28, 1987, or against the order of the Tribunal dated September 10, 1987, nor even against the subsequent orders dismissing the subsequent applications u/s 254(2) of the Act. This writ petition has been filed on December 5, 1989 seeking the quashing of the Tribunal's order dated May 28, 1987 as well as the order dated September 10, 1987 and subsequent orders.

7. A preliminary objection was raised on behalf of the Revenue that the present writ petition is not maintainable and that the proper remedy of the petitioner was to file an application u/s 256(1) of the Act either against the order dated May 28, 1987, or against the order dated September 10, 1987, as the case may be. It is argued that the petitioner having allowed the said remedy to become barred, cannot be allowed to approach this court by way of this writ petition.

8. Learned counsel for the petitioner argued that where a grave illegality has been committed or fundamental rights are violated or a patently erroneous finding had been recorded, the non-availment of alternative remedy does not stand in the way of this court exercising its power under article 226 of the Constitution. In support of this proposition, learned counsel relied upon the decisions of the Supreme Court in Tata Engineering and Locomotive Company

Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, and Shri Anil Kumar Chowdhury Vs. State of Assam and Others, , besides a decision of the Bombay High Court in Nandlal Vithaldas Vs. Commissioner of Income Tax, . We do not, however, think that any such apparent illegality or infraction of a fundamental right is established in this case nor is this a case where the finding is patently erroneous, assuming that such a finding permits this court to act in such a situation. So far as the telegram is concerned, it is admitted that it did not reach the Tribunal on the date of hearing. Indeed, the Tribunal did not dispose of the appeal on the same day (May 19, 1987) but only on May 28, 1987. It is not the petitioner's case that the telegram reached the Tribunal on any day subsequent to May 19, 1987. He also made no attempt to appear before the Tribunal on or before May 28, 1987. So far as his application for adjournment is concerned, the Tribunal has said that it is not found in the records and that the material produced by the petitioner does not establish that any such application was filed. Even if there is any defect in the order, it cannot certainly be characterised as a patent error. Thus, even if the ratio of the Bombay High Court decision referred to above is applied, this would not be a case for interference under article 226 of the Constitution of India.

9. It may also be noticed that the application u/s 254(2) of the Act was rejected as far back as on September 19, 1987 and this writ petition was filed on December 5, 1989, that is more than two years later. It is no explanation to say that the petitioner kept on filing consecutive applications u/s 254(2) of the Act. He cannot unilaterally extend the time by filing such applications, not by the Act (sic).

10. For the reasons stated above, the writ petition is dismissed.

11. No costs.