(1942) 02 AHC CK 0024

In the Allahabad High Court

LALA GANESH PRASAD, IN RE.

Date of Decision : 24-02-1942

Acts Referred:

Citation : (1942) 12 AWR 168 : (1942) 10 ITR 286

Final Decision : Dismissed

Judgement

This is an application u/s 66 (3A) of the Indian Income Tax act. The applicant prays that the we should require the Commissioner to state a case and refer two questions of law for our decision. The learned Commissioner had refused to state a case u/s 66 (2) of the Act because he thought that the application was barred by time.

The facts are that the Assistant Commissioners order was passed on the 3rd of January 1939 of January 1939, and it is common-ground that the application u/s 66 (2) of the Act would have been in time up to the 13th March 1939. An application asking for a reference u/s 66 (2) was filed on the 16th of February1939 (that is with in time), but it was not accompanied by a fee of Rs. 100 as required. The petitioner was also informed by the Commissioner of Income Tax that Rs. 100 ought to be remitted immediately. Nothing seems to have been done by or on behalf of the petitioner till the 13th of March 1939, the very last date of limitation, when an insured letter form Benares was sent to the Commissioner. This insured letter contained a currency note for Rs. 100 but it was received in the Commissioners office on the 15th of March 1939, two days after limitation had run out.

The learned Commissioner says :

"Section 66 (2) contains no saving clause and gives neither the Commissioner nor the High court any power to condone delay if the assessee does not present his application within the time prescribed."

This view is right. There is Section 66 (7-A) of the Act which says :

"Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under Sub-section (3) or sub-section (3-A)."

There is, however, no provision authorising the Commissioner to have recourse to Section 5 of the Limitation Act, 1908, in connection with an application presented before him.

Learned counsel for the assessee says that the application was within time, but he forgets that an application is not complete till it is accompained by a fee of Rs. 100, and from what we have said above it is clear that the fee of Rs. 100 was received two days after the expiry of the period of limitation. We are, therefore, satisfied that the Commissioners decision on the point of limitation was correct, and we dismiss this application with costs. We fix the fee of the learned Advocate-General at; Rs. 50 After deducting the costs of the Department the balance may be refunded to the assessee out of the deposit of Rs. 100.

Application dismissed.