
(1975) 05 PAT CK 0009
In the Patna High Court
Case No : Tax Case No. 93 of 1971

Loon Karan Bararia

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-05-1975

Acts Referred:

Income Tax Act, 1961 — Section 268
Limitation Act, 1963 — Section 12

Citation : (1975) 36 STC 397

Hon'ble Judges : S.N.P. Singh, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : G.C. Bharuka, for the Appellant; Lakshman Sharan Sinha and Guru Sharan Sharma, Junior Counsel to Standing Counsel No. I, for the Respondent

Judgement

S.K. Jha, J.—Statement of case u/s 33(1) of the Bihar Sales Tax Act, 1959 (hereinafter to be referred to as "the Act"), has been submitted by the Commercial Taxes Tribunal, Bihar, Patna, and the following question of law has been referred for the opinion of this court:

Whether, in the facts and circumstances of the case, the Tribunal is justified in holding that the time requisite for obtaining certified copy should commence from 6th June, 1968, the date of receipt of the application for the copy by the authority concerned and not from 3rd June, 1968, the date on which the application was posted by the applicant ?

2. The facts relevant for the disposal of this case may be stated in a very narrow compass. The assessee M/s. Loon Karan Bararia is a registered dealer at Kishanganj in the district of Purnea. It was assessed for sales tax for the year 1964-65 by an order of assessment dated the 7th June, 1966. An appeal having been preferred by the dealer before the Appellate Assistant Commissioner, the same was dismissed by the Appellate Assistant Commissioner's order dated 6th April, 1968. On 3rd June, 1968, the dealer sent by registered post an application for the grant of certified copy of the order dated 6th April, 1968. This application

for certified copy was received by the authority on 6th June, 1968, and the copy was ready and delivered to the assessee on 8th July, 1968. The dealer thereafter filed an application in revision on 12th July, 1968, before the Deputy Commissioner, Commercial Taxes, Bhagalpur. The Deputy Commissioner dismissed the petition of revision summarily on the ground that it was barred by limitation even after taking into account the time taken in obtaining the certified copy from 6th June, 1968, to 8th July, 1968. Against that revisional order of the Deputy Commissioner, the dealer preferred a further revision before the Tribunal. The Tribunal by a majority of two members to one held against the dealer negating the contention put forward on behalf of the dealer that the period eligible for deduction for obtaining the certified copy should be computed from 3rd June, 1968, and not 6th June, 1968. While the two learned members of the Tribunal held that the date of making the application for the certified copy would in law be deemed to be 6th June, 1968, when the application was received by the authority concerned, one learned member held that the date of making the application should be 3rd June, 1968, when the application was made through registered post by the dealer.

3. The short point for determination in this case is as to whether the time requisite for obtaining the certified copy of the order should be reckoned from 3rd June, 1968, when the dealer made an application by registered post or from 6th June, 1968, when the application was actually received in the office of the authority concerned.

4. Certain provisions of the Act and the Bihar Sales Tax Rules, 1959 (hereinafter to be referred to as "the Rules"), may be noticed here. Section 30(4) of the Act provides that every appeal under that section shall be filed within 45 days of the receipt of the notice issued under Sub-section (5) of Section 20 or Sub-section (1) of Section 21 or of the receipt of the order u/s 20A, as the case may be, but the appellate authority may admit an appeal after the expiry of such date if it is satisfied that the appellant had sufficient cause for not presenting the appeal in time. Similarly, Section 31(4) of the Act dealing with applications for revision provides that every application for revision shall be filed within 60 days of the passing of the order which is sought to be revised, but the authority to whom the application lies may admit it after the expiry of the said period of 60 days if it is satisfied that the applicant had sufficient cause for not filing the application within the said period. It would appear from the provisions of Section 30(4) and Section 31(4), which fix respectively the period of limitation for filing an appeal or revision, that the appellate authority or the revisional authority has been conferred sufficient power to condone the delay in filing an appeal or revision if sufficient cause is shown by the appellant or the petitioner. The question, however, which has been referred for the opinion of this court does not involve consideration of the aforesaid provisions conferring the power of condonation of delay on the appellate or revisional authority. What is more relevant to notice is that rules have been framed in consonance with which an appeal or a revision can be filed. Rule 21 of the Rules provides the procedure for filing a

memorandum of appeal u/s 30 of the Act. Similarly, Rule 22 of the Rules prescribes the formalities which must be completed for filing an application for revision u/s 31 of the Act. Rule 22(1)(c) lays down that an application for revision u/s 31 filed by a dealer or a person upon whom notice u/s 21 has been served shall be presented to the revisional authority by the applicant or by his agent or legal practitioner or be sent by registered post to the said authority. Clause (e) of Rule 22(1) requires that the petition of revision must be accompanied by a certified copy of the order which is sought to be revised and true typed copies of the final orders at the original stage, the appellate stage and the preceding revisional stage or stages, if any. It is clear, therefore, that an application for revision must be accompanied by a certified copy of the order impugned. Although the law requires a certified copy of the order under revision to accompany the application for revision, there is no provision either in the Act or the Rules which provides for deduction of the time taken in obtaining the certified copy of the order. It is worthwhile to notice here that in the Income Tax Act, 1961, Section 268 clearly provides that in computing the period of limitation prescribed for an appeal or an application under that Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded. Thus, although specific provision has been made in 1961 Income Tax Act for exclusion of the time requisite for obtaining the certified copy, there was no such provision in Section 67-A of the 1922 Income Tax Act. But even prior to the enactment of that section in 1930, analogous provisions of the Limitation Act were held to apply to appeals and applications under that Act (cf. *Mohan Lal Hardeo Das v. Commissioner of Income Tax* (1930) 4 I.T.C. 90 and *Muhammad Hayat v. Commissioner of Income Tax* (1929) 3 I.T.C. 319). Thus, there is no difficulty in applying the provisions or the principles underlying Section 12(2) of the Limitation Act, 1963. Section 12(2) of the Limitation Act runs thus:

In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a Judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

The question that precisely arises for determination for answering the question referred is as to whether the term "the time requisite for obtaining a copy" of the order would include the time taken in course of the postal transit when an application is made for obtaining the certified copy through registered post. In this connection, Rule 35(4) of the Rules deserves special notice. Rule 35 deals with grant of copies. Sub-rule (1) of Rule 35 lays down that subject to the provisions of Section 45, if any dealer or a person on whom notice has been served u/s 21 wants to have a certified copy of a document filed by him or of an order concerning him passed by any authority appointed u/s 8 he shall make an application to the authority concerned. The remaining portion of Sub-rule (1)

deals with the value of court-fee stamp, searching fee, etc. So also Sub-rules (2) and (3) lay down the requisite court-fee stamps to be filed by the applicant in applications for supply of the copy in various modes. Thereafter Sub-rule (4) of Rule 35 reads thus :

Notwithstanding anything contained in Sub-rules (1), (2) and (3), an application for copy may also be made by registered post, in which case the applicant shall pay a consolidated fee of rupees five. In such case, the application shall be accompanied by a challan in form XIX showing payment of the amount into the Government treasury.

From the aforesaid provisions of Sub-rule (4) of Rule 35, it is obvious that one of the modes available to the dealer for making an application for certified copy of any document including the order against which an application in revision is to be filed is making an application by registered post. It is not in dispute in the present case that the dealer had made an application within the period of limitation by registered post on 3rd June, 1968. It is also not in dispute that the required consolidated fee of Rs. 5 and the challan in form XIX showing payment of the amount into the Government treasury were duly complied with. Thus, all the formalities prescribed were duly complied with by the dealer. As has already been stated above, although the application was sent by the dealer through registered post in pursuance of the provisions of Sub-rule (4) of Rule 35 on 3rd June, 1968, that application reached the authority concerned on 6th June, 1968. The question is as to whether the time taken by the postal department from 3rd June to 6th June, 1968, would be said to be included in the time requisite for obtaining a copy of the order. The time requisite within the meaning of Section 12 of the Limitation Act has been held by a Full Bench of the Madras High Court in the case of Panjam V. Thirumala Reddi Vs. C.K. Anavema Reddi and Others, as the time beyond the appellant's control occupied in obtaining the copy which accompanies the memorandum of appeal and not an ideal lesser period which might have been occupied if the application for copy had been filed at some other date. The true scope of the expression "the time requisite for obtaining a copy of the decree, sentence or order appealed from" in Section 12(2) of the Limitation Act came up for consideration before the Supreme Court in the case of State of Uttar Pradesh Vs. Maharaj Narain and Others, . Their Lordships have held in that case that what is deductible u/s 12(2) is not the minimum time within which a copy of the order appealed against could have been obtained. That section permits the appellant to deduct from the time taken for filing the appeal the time required for obtaining the copy of the order appealed from and not any lesser period which might have been occupied if the application for copy had been filed at some other date. That section lays no obligation on the appellant to be prompt in his application for a copy of the order. Approving the Full Bench decision of the Madras High Court in the case, referred to above, the Supreme Court further went on to say that the words "time requisite for obtaining a copy of the decree" mean the time beyond the party's control "occupied in obtaining the copy", which is filed. If, therefore, in the instant case

it can be held that the time taken from 3rd June to 6th June, 1968, was beyond the dealer's control and such a time was occupied in obtaining the copy which was filed, then the period from 3rd June to 6th June, 1968, would be entitled to be deducted in computing the period of limitation. As I have already pointed out above, the law confers a right on the dealer to make an application for copy by registered post. If in pursuance of such a legal sanction the dealer did make an application through registered post before the expiry of the period of limitation, then can it be said that the time taken by the postal department to reach the application to the authority concerned was not beyond the control of the dealer ? The answer in my view should clearly be in the negative. The postal department in view of the provisions of Rule 35(4) will be deemed to have received the application on behalf of the authority concerned. For the purpose of computation of the period of limitation or the deduction of any period under the provisions analogous to those of Section 12(2) of the Limitation Act, there seems no justification in law to make any distinction between the provisions of Sub-rule (1) of Rule 35 on the one hand and Sub-rule (4) of that rule on the other. Under Sub-rule (1), if the dealer had made an application to the authority concerned in person or through a representative on 3rd June, 1968, he would be entitled to a deduction of the period from 3rd June, 1968. In my view, the law does not warrant any distinction between Sub-rule (1) and Sub-rule (4) for the purpose of computing the period deductible in obtaining the certified copy. If instead of making an application in person on 3rd June, 1968, the dealer has availed of the alternative mode prescribed under Sub-rule (4) of Rule 35 in making an application on that day through registered post, it does not stand to reason as to how it can be said that time between 3rd and 6th June, 1968, was not beyond his control.

5. For the reasons stated above, I have no hesitation in holding that the date of making of the application for copy either in a case covered by Sub-rule (1) of Rule 35 or by Sub-rule (4) of Rule 35 would be the same. If a dealer makes an application on a particular date in person while, on the other, another dealer on that very date makes an application by registered post, the period deductible as the requisite time for obtaining the certified copy cannot be said to be different in either of the two cases. I would accordingly answer the question referred in favour of the assessee and against the revenue and hold that, on the facts and in the circumstances of the case, the Tribunal was not justified in holding that the time requisite for obtaining certified copy should commence from 6th June, 1968, the date of receipt of the application for the copy by the authority concerned and not from 3rd June, 1968, the date on which the application was posted by the applicant. In the circumstances of the case, however, I would make no order as to costs.

S.N.P. Singh, C.J.

6. I agree.