

(1950) 09 AHC CK 0035
In the Allahabad High Court
Case No : Misc. Case No. 83 of 1949

Mahabir Prasad

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-09-1950

Acts Referred:

Income Tax Act, 1922 — Section 66(2), 66(4)

Citation : AIR 1952 All 271 : (1951) 20 ITR 472

Hon'ble Judges : Malik, C.J.;V. Bhargava, J

Bench : Division Bench

Advocate : Balram Upadhiya, for the Appellant; Walter Dutt and S.C. Das, for the Respondent

Final Decision : Disposed Of

Judgement

Malik, C.J.—The question referred to us u/s 66 (1), Income Tax Act runs as follows :

"1. (a) Whether an order passed by an Appellate Assistant Commissioner refusing to admit an appeal by holding that it was not presented within time is an order u/s 30, Clause (2), Income Tax Act, or u/s 31 of the Act ?

(b) Whether an appeal is competent to the Tribunal from such order ?"

2. This reference came up for hearing before us to day and an application was moved u/s 66 (4) of the Act on behalf of the assessee that as certain other questions arise out of the order of the Income Tax Appellate Tribunal, they should have also been referred to us.

3. Mr. Das on behalf of the Department has opposed the application on the ground that it is barred by limitation. Section 66 (2), Income Tax Act provides that if, on any application being made under Sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months

from the date on which he is served with the notice of the refusal, apply to the High Court. There seems to be no clear provision relating to a case where the Appellate Tribunal has not refused to state a case but has referred only some of the questions of law that it was asked to refer and not others. The provisions of Sub-section (2) of Section 66 of the Act, which provide for six months' limitation for an applicant on where the Tribunal has refused to state a case on the ground that no question of law arises, will not therefore, apply to such a case. Sub-section (4), to our minds, is wide enough to cover such a case and if this Court is satisfied that the statement of the case is insufficient, it can refer the case back to the Income Tax Appellate Tribunal to give a fuller statement. No period of limitation having been fixed for such an application, there appears to be no bar to the application being filed at the time of the hearing of the reference. If the Court then considers that it would like to have further statement of facts and other questions referred to it, it can always pass suitable orders u/s 66 (4), Income tax Act. The point is covered by the decision of a Bench of the Bombay High Court in N. Vs. KHANDVALA v. COMMISSIONER OF Income Tax., . Mr. Das has distinguished this case on the ground that this was a case where the High Court had asked for a reference u/s 66 (2) and it was not a case u/s 66 (1), Income Tax Act. So far as the powers of this Court u/s 66 (4) are concerned, they are the same whether a reference has been made by the Income Tax Appellate Tribunal on the motion of the assessee or the Commissioner or under the directions issued by this Court. We are, therefore, of the opinion that no objection can be taken on the ground of limitation.

4. The facts of the case are that notice of assessment was served on the assessee on 11-5-1946. On 15-5-1946, the assessee applied, by post, for copy of the assessment order. This application was received by the Income Tax Officer on 16-5-1946. The copy of the assessment order was sent to the assessee by registered post on 19-7-1946, but, by reason of some delay in the post-office, it was received by the assessee on 7-8-1946, and the appeal before the Appellate Assistant Commissioner of Income Tax was filed on 2-9-1946. The Appellate Assistant Commissioner of Income Tax refused to admit the appeal and held that it was clearly time-barred. It was against that order that an appeal was filed before the Income Tax Appellate Tribunal. The Tribunal came to the conclusion that the appeal filed before the Appellate Assistant Commissioner was barred by time, that it was in the discretion of the Appellate Assistant Commissioner to condone or not to condone the delay and that the matter could not be examined by the Tribunal. The Tribunal also held that no appeal lay to it as the order of the Appellate Assistant Commissioner was not u/s 31 but it was u/s 80, Clause (2), Income Tax Act.

5. The question referred to us for our opinion is whether an appeal lay to the Tribunal. The assessee wants certain other questions to be referred to us. We think, those questions do arise. They are, whether the appeal, filed before the Appellate Assistant Commissioner on 2-9-1946, was or was not filed within time that is, whether the assessee was entitled to a deduction of the whole period

between 15-5-1946 and 7-8-1946, or, only the period between 16-5-1946 and 19-7-1946 and also whether an appeal can be filed before the Tribunal against an order of the Appellate Assistant Commissioner of Income Tax refusing to admit an appeal where the appeal was not really barred by limitation but was within time. A third question which may also be said to arise is whether the Tribunal was entitled to consider whether the grounds for condonation of the delay were or were not sufficient where the Appellate Assistant Commissioner had refused to condone the delay. All these questions ought to have been referred to us.

6. Under the circumstances, we send the case back to the Income Tax Appellate Tribunal, Allahabad Bench for a fresh and more detailed statement of the case in the light of the observations made by us above.