
(1972) 07 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4109 of 1971

Mohammad Ekram Khan and Sons

APPELLANT

Vs

The Sales Tax Officer and Another

RESPONDENT

Date of Decision : 18-07-1972

Acts Referred:

Limitation Act, 1963 — Section 30, 5

Citation : (1973) 31 STC 328

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The facts necessary for the disposal of this petition fall within a very narrow compass. An ex parte assessment was made against the petitioner. Thereafter, an application u/s 30 of the Act was moved for setting aside the ex parte order. The Sales Tax Officer refused to set aside the order on the ground that in case the application were allowed, the assessment could not be made as limitation had run out. Apart from this he also took the view that the assessee had not appeared in spite of a number of dates having been fixed in the case and, as such too, the application deserved to be dismissed. The assessee, thereafter, filed a revision against this order before the Judge (Revisions). Subsequently, it discovered that the order was appealable and in this view of the matter it filed an appeal before the Judge (Appeals) on the 20th February, 1971, along with an application u/s 5 of the Limitation Act for condonation of the delay in filing the appeal. In the application filed by him (annexure H to the petition), it was stated that the appeal had not been filed under a bona fide mistake and under a mistaken legal advice and as soon as it came to know of this defect on the 19th February, 1971, it was filing the appeal along with an application for condonation of the delay, if any. The Judge (Appeals), however, dismissed the

application for condonation of delay, as he took the view that inasmuch as the order dismissing the application for setting aside the ex parte assessment clearly mentioned that it was passed u/s 30 of the Act, there was no justification for the assessee to have filed a revision against that order. He also found fault with the assessee for not disclosing the particulars of the revision filed by him.

2. The assessee has filed this petition challenging the order of the Sales Tax Officer refusing to restore the case, as also the appellate order.

3. The provisions of Section 5 of the Limitation Act have been made applicable to appeals and as such the appellate authority can condone the delay in filing an appeal provided sufficient cause is shown. It is well-settled that a bona fide mistake committed by litigants on account of mistaken legal advice is sufficient cause, as envisaged by Section 5 of the Limitation Act : see *Mata Din Vs. A. Narayanan*, . The Judge (Appeals) does not seem to have considered this aspect of the matter, as he has dismissed the application solely on the ground that the order of the Sales Tax Officer dismissing the restoration application clearly mentions that it was passed u/s 30 of the Act. The mere fact that the order recited that it was passed u/s 30 of the Act, could not by itself prevent a mistaken legal advice being given in the matter. It does not appear from the record that the application filed by the assessee for condonation of the delay was factually controverted by the department. Thus, the reasons given by the Judge (Appeals) for rejecting the application does not appear to be sound. The other reason appears to be highly technical. He has thrown out the application on the ground that the assessee had not given the specific particulars of the revision filed by him. In case, the Judge (Appeals) was doubtful about the allegation made by the assessee in his application he could have easily ascertained the facts by summoning the record or called upon the assessee to file a certified copy of the memo of revision. This apart, when the application u/s 5 had not been controverted by the department, there was no material on record on the basis of which the Judge could have doubted the factum of the filing of revision by the assessee. In the writ petition the petitioner has averred in paragraph 13 of the petition that he had filed a revision and has appended a true copy of the grounds of revision as annexure F to the petition. This fact has not been controverted and as such the appellate order cannot be sustained and we are, therefore, of the view that the appeal should be heard afresh. Inasmuch as we are directing a fresh hearing of the appeal, we do not think it necessary to express any opinion on the order passed by the Sales Tax Officer.

4. We accordingly allow the writ petition and quash the order dated 10th June, 1971, of the Judge (Appeals) (annexure I to the petition) and direct him to decide the appeal afresh. Inasmuch as the matter has been pending for a considerable time before the taxing authorities, it would be advisable for the appellate authority to dispose of the appeal as expeditiously as possible. The petitioner is entitled to his costs.