

(2012) 03 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 46510 of 2011 (T-AIT)

M/s Baganeheddal "C" Estate

APPELLANT

Vs

The Karnataka Appellate Tribunal and The Assessment
Commissioner of Agricultural Income Tax, Circle 1
Chickmagalur

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 34 (9), 43 (4)

Citation : (2012) ILR (Kar) 3953 : (2013) 75 KarLJ 160 : (2013) 212 TAXMAN 99

Hon'ble Judges : Ajit J Gunjal, J

Bench : Single Bench

Advocate : S.P. Bhat, for the Appellant; K.A. Ariga AGA For R2, for the Respondent

Judgement

Ajit J Gunjal

1. Mr. K. M. Shivayogiswamy, learned Additional Government Advocate is directed to take notice for respondent No. 2. I do not find any merit in this writ petition and is liable to be dismissed for the following reasons:

2. The petitioner is a partnership firm. It owns a coffee estate at Chickmagalur, The firm was liable to be taxed on its coffee income under the Karnataka Agricultural income tax Act, 1957 for the assessment year 1998-99. The Assessing Authority while concluding the assessment, made an addition of Rs. .18.84, 000/- to the declared coffee income. He also disallowed expenses of Rs. . 10, 96, 330/- under the head "wages". This was questioned by the petitioner before the Joint Commissioner of Income Tax who reduced the addition made to coffee income from Rs. . 18, 84, 000/- to Rs. . 9, 42, 000/- and the disallowance of expenses was reduced from Rs. . 10, 96.330/- to Rs. .6, 30, 213/-. which would necessarily mean that the petitioner was substantially benefited. The petitioner filed an appeal before the Karnataka Appellate Tribunal questioning the order of the Joint Commissioner insofar as disallowing the claim.

The appeal papers were sent by post to the Tribunal on 27.12.2001. The case of the petitioner is that there was no communication from the Tribunal subsequent to the filing of the appeal regarding its status and the petitioner continued to be under the bonafide impression for over a period of nine years that the appeal filed by him is pending disposal. But however, the petitioner received a demand notice on 4.1.2011 calling upon the petitioner to pay a sum of Rs. . 2, 56, 620/- for the assessment year 1998-99 on the ground that the appeal filed by the petitioner was rejected on 30.4.2002. On receipt of the demand the petitioner files a Misc. Petition before the Tribunal seeking to recall the order dated 30.4.2002 and restore the appeal to the file and hear it on merits. The said application is filed under Regulation 28A of the Karnataka Appellate Tribunal Regulation Amendment Act, 1979 (for short "the Regulations"). The Misc. Petition was heard and the Tribunal found that the delay of nine years is not at all explained by the petitioner inasmuch as the petitioner was not vigilant, after filing of the appeal in the year 2001. Aggrieved by the same, the petitioner is before this Court.

3. Mr. S.P. Bhat, learned counsel appearing for the petitioner vehemently submits that every order passed by the Tribunal is required to be communicated to the petitioner/appellant. He further submits no such exercise has been done by the Tribunal. The petitioner came to know about the order of dismissal only when the notice was issued on 4.1.2011 and immediately thereafter within six months the petition is filed. He submits that every order passed by the Tribunal whatever might be the nature is required to be communicated to the party. Hence, the delay was explained and sufficient: cause was shown.

4. Mr. K.M. Shivayogiswamy, learned counsel appearing for the State supports the impugned order. He submits that no explanation is forthcoming for seeking condonation of delay inasmuch as the petitioner had kept quiet for a period of nine years after filing of the appeal.

5. Apparently, in the case on hand the petitioner cannot be heard to say that the Tribunal was obliged to inform the petitioner about the dismissal of the order. Assuming that the Tribunal is required to send a copy of the order to the petitioner/appellant, the petitioner is also obliged to be vigilant about the proceedings initiated by him. All the applications blame be set at the threshold of the Tribunal. The litigant also has certain obligations in the nature of pursuing the proceedings, which are initiated by him. The litigant cannot be heard to say that he would file an appeal in person and that too by post would keep quiet without verifying as to the status of the appeal. The filing of the appeals, review or revision are regulated by the regulations. Chapter III of the Regulations would deal with the presentation of Appeals and Petitions and their Registration. Regulation 5(a) regulates every appeal or petition shall be accompanied by:

(i) A copy of the judgment or order or award served on the party by the authority or a certified copy thereof in respect of which the appeal or petition has been presented.

(ii) Certified copy of the judgment or order of the Tribunal in the case of a review petition.

(iii) Application, if any, for condonation of delay and or stay of operation of the impugned order accompanied by an affidavit; and

(iv) As many copies of the memorandum of appeal or petition as there are respondents.

6. Regulation 6 refers to every appeal filed under the provisions of the Karnataka Sales Tax Act, 1957, Central Sales Tax Act, 1956 and the Karnataka Agricultural Income Tax Act, 1957 and the other enactment's, which are referable to the imposition of tax under various categories like the Karnataka Entertainments Tax Act, 1959, the Karnataka Tax on Professions, Trades, Callings and Employment Act, 1976 etc.,

7. Regulation 9(b) indicates that on receipt of such papers, if no defects are found, the same shall, upon the orders of the Chairman, be posted for admission before a Member or Bench, by not later than 10 days from the date of its receipt.

8. In the case on hand it is to be noticed that the appeal was presented through post. One of the conditions for filing of an proper appeal is the appeal papers are to be accompanied by a Power of Attorney or authorizing someone to file an appeal. Indeed, the appeal papers filed by the appellant were defective inasmuch as it did not accompany by a Power of Attorney executed by the petitioner in favour of the agent to file an appeal. Indeed, if that were to be the case, I am of the view that there was no proper presentation of the appeal at all. Hence, the Tribunal called upon the petitioner to rectify the defects.

9. Indeed, it is to be noticed that the appeal was presented on 3.1.2002 and the matter was being adjourned for rectification of the defects. Ultimately, when the matter was listed on 11.4.2002, the Tribunal granted time till 30.4.2002 to rectify the defects. The matter was directed to be re-listed on 30.4.2002 on the said date the petitioner was not present and the defects were not rectified. The notice of the defects was duly published and it was affixed on the notice board. The Tribunal in the circumstances had no option but to reject the appeal on the ground of non-compliance of office objections. I am of the view that the petitioner who is avoiding payment of tax on various grounds certainly ought to have been more vigilant. Indeed, it is often said that the Court would come to the aid of the litigant who is vigilant and not indolent. In the case on hand the petitioner has slept, over his rights for a period of nine years and he cannot be heard to say that he was required to be informed about the dismissal of the appeal for non removal of office objections when he is the appellant and was required to pursue the appeal if he really wanted to avoid the payment of tax either legal or illegal.

10. Indeed, a contention was urged before me that the Tribunal was obliged to inform the petitioner. I am of the view that neither the regulation nor the Act

provides for such an eventuality. It is no doubt true Section 34 (9) of the Karnataka Agricultural income tax Act, 1957 contemplates that every order passed by the Appellate Tribunal under Sub Sections 4, 6 or 7 shall be communicated to the assessee. In the case on hand, I am of the view that Sub - Sections 4, 6 or 7 of Section 34 of the Act are not at all applicable inasmuch as Sub-Section 4 of Section 34 of the Act would deal with a situation whether the appeal has been disposed of on merits and so far as Sub-Section 6 & 7 are concerned they would relate to the review of the order passed, which is not the case here. Regulation 52 of the Regulations no doubt contemplates that every order passed by the Tribunal is required to be communicated within a specified time. But however that once again pre-supposes that the proceedings must have been disposed of on merits. In the case on hand the defects were notified on the notice board. Hence, I am of the view that that itself can be construed as notice to the appellant to rectify the office objections. Having said so, I am of the view that the inordinate delay of nine years has not been explained by the petitioner. The order passed rejecting the Misc. Petition cannot be faulted. It is no doubt true that sufficient cause is required to be construed liberally but however, not so liberal so as to make it redundant and inoperative. Petition stands rejected.

Mr. K.M. Shivayogiswamy, learned Additional Government Advocate appearing for respondents is permitted to file memo of appearance within four weeks.