

(1958) 04 BOM CK 0017

In the Bombay High Court

Case No : Special Civil Application No. 2329 of 1957

Petlad Bulakhidas Mills Co. Ltd.

APPELLANT

Vs

Raj Singh

RESPONDENT

Date of Decision : 01-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 33A, 33A(2)

Citation : AIR 1960 Bom 12 : (1959) 37 ITR 264

Hon'ble Judges : Chagla, C.J.; S.T. Desai, J

Bench : Division Bench

Judgement

Chagla, C.J.—This petition raises a very short question as to the interpretation of the period of limitation provided u/s 33A for the making of an application by the assessee for the making of an application by the assessee for revision.

2. The Appellate Assistant Commissioner made the order on January 9, 1956. The order was served upon the assessee on January 27, 1956, and the assessee made the application for revision u/s 33A on January 25, 1957. The period of limitation is one year from the date of the order or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period, and the contention of the Department is that limitation begins to run from the date of the order, viz., January 9, 1956, and inasmuch as the application was made on January 25, 1957, the application is out of time. On the other hand, the contention of the assessee is that limitation begins to run from the date when the assessee came to know of the order, which is January 27, 1956, and, therefore, his application is within time.

3. Mr. Joshi has drawn our attention to various sections in the Income Tax Act where the Legislature has expressly provided that limitation should run from the date of the service of the order, and Mr. Joshi says that if the Legislature in section 33A provides for limitation from the date of the order, we must give

effect to the legislative provision. What we have to decide is what is the meaning to be attached to the word "order" used in the expression "from the date of the order". If "order" means a unilateral arriving at a decision by the Appellate Assistant Commissioner without the person affected having any knowledge of that decision then undoubtedly limitation would begin to run from the date when the Appellate Assistant Commissioner chooses to pass the order. In this view of the case, the Appellate Assistant Commissioner may make the order, put it in a drawer, forget about it, and if a year has passed after it the right of the assessee to go in revision would be barred. Now that seems to us to be an entirely untenable contention. If the Legislature gave the right of revision to the assessee u/s 33A it was an effective right and if the Legislature provided a period of limitation that period must equally be an effective period. When we say "effective" what we mean is that the whole period must be permitted to the person affected by the order within which he can prefer the application for revision. The assessee should know that he has a year's time within which to make up his mind whether he should apply for revision or not. If Mr. Joshi's contention were to be accepted, we would be driven to this extraordinary conclusion that the period of limitation provided by the Legislature could be cut down by the action of the Appellate Assistant Commissioner. The Appellate Assistant Commissioner could at his sweet will determine what the period of limitation was. He need not promulgate the order for a month, two months, or six months, and the period of limitation would depend upon when he chose to intimate to the party affected the nature of his order. Surely that could not have been the intention of the Legislature. Mr. Joshi's answer is that the Commissioner has the power to condone delay for sufficient cause. But if the period of limitation itself is cut down by the action of the Appellate Assistant Commissioner, then it could not be said that if the assessee did not exercise his right within that time that constituted sufficient cause for condonation of delay by the Commissioner. Sufficient cause must mean a cause which prevented the assessee from preferring his application for revision within the time permitted by the section. The assessee could not possibly urge that he had sufficient cause for preferring his application on January 25, 1957, because the order was served upon him on January 27, 1956. The answer to that would be that limitation began to run from January 9, 1956, and he must prefer his revision application within one year from that date. In this case the Appellate Assistant Commissioner has cut down the period of limitation by only 18 days., But if we were to construe section 33A as suggested by Mr. Joshi there is no reason why it would not be possible for the Appellate Assistant Commissioner to cut down the period of limitation by a much longer time. In our opinion on, therefore, the expression "order" in this section means an order of which a party affected has actual or constructive notice. The right of appeal is given to an assessee against the order, and that right of appeal can only be effectively exercised if the party affected has knowledge of that order. We do not suggest that the knowledge must be in every case actual knowledge. It may be constructive knowledge. The Appellate Assistant Commissioner may announce that he is going to pass this

order on a particular date. The assessee may not choose to turn up on that date. In such a case the assessee cannot contend that he had no knowledge of that order, because he could have had knowledge if he was present on the date announced for publication of the order. But if the assessee has neither actual nor constructive knowledge, it cannot possibly be suggested that there is an order within the meaning of section 33A(2) against which the assessee could possibly have appealed.

4. Turning to the authorities, the Madras High Court has taken the same view of the section in a recent judgment in *Muthian Chettiar v. Commissioner of Income Tax* and the learned Chief Justice in his judgment points out at page 404 that the interpretation of the Madras High Court was based upon a salutary and just principle, viz., that if a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order, and, therefore, must be presumed to have had knowledge of the order.

5. The Punjab High Court in *Mahabir Parsed v. Commissioner of Income Tax* has taken a different view, but with respect, that view is obiter because what was held by that court was that the particular order made could not be challenged as it was made before the Constitution and article 226 had no application. Having decided that the Punjab High Court went on to consider the question of limitation u/s 33A and the Punjab High Court has differed from the Madras High Court and the reason why it has differed is that rule of *casus omissus* does not permit the court to alter a word so as to produce a *casus omissus*. According to the Punjab High Court, the language used by the Legislature was clear and explicit and there was no omission which could be made good by the court. But with very great respect to the Punjab High Court the contention of the assessee is not based upon the principle of *casus omissus*. The assessee does not contend that we should re-write the section and insert words which the Legislature did not think fit to insert. What the assessee contends is that we should give a reasonable interpretation to the word used by the Legislature and that word is "order". Therefore, in construing section 33A(2) as we are construing, we are not adding to the words used by the Legislature or altering the words used by the Legislature. We are placing a reasonable interpretation upon the very words used by the Legislature, and interpretation which ensures an effective right of revision to the assessee and also ensures an effective period of limitation provided by the Legislature.

6. In our opinion, therefore, the Commissioner was in error in coming to the conclusion that the application for revision of the petitioner was barred by limitations. If the application was not barred, it was the statutory duty of the Commissioner to hear his application. This is a clear case where we should issue a mandamus against the Commissioner directing him to hear the application of the petitioner.

7. The result is that the petition must succeed. The rule is made absolute with costs. There will be an order in terms of prayer (b) of the petition.

8. Petition allowed : Rule made absolute.