

(1955) 04 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No. 124 of 1951

Satrughan Mall

APPELLANT

Vs

Revenue Commissioner

RESPONDENT

Date of Decision : 06-04-1955

Acts Referred:

Income Tax Act, 1922 — Section 66
Limitation Act, 1908 — Section 12, 12(2), 29, 29(2)
Orissa Agricultural Income Tax Act, 1947 — Section 44

Citation : AIR 1956 Ori 34 : (1955) 21 CLT 283 : (1955) 28 ITR 486

Hon'ble Judges : Panigrahi, C.J.;Narasimham, J

Bench : Division Bench

Advocate : H.C. Bose and P.K. Bose, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Narasimham, J.—This is an application under Sub-section (4) of Section 28, Orissa Agricultural Income Tax Act, 1947 against an order of the Revenue Commissioner, Orissa, rejecting an application under Sub-section (2) of Section 19 of that Act on the ground that it was time-barred.

2. The material facts are as follows: The petitioner was assessed to agricultural income tax for the year 1947-48 on 28-2-1949. His appeal to the Collector of Agricultural Income Tax u/s 25 of that Act was disposed of on 7-9-1949 with some directions to the Agricultural Income Tax officer to modify the assessment order in the light of the instructions contained in the Judgment.

The petitioner then filed a revision petition u/s 28 of the Act before the Revenue Commissioner which after a remand was finally disposed of on 9-2-1951 with an order to the effect that the appellate order of the Collector of Agricultural Income Tax was correct and that there was no ground for revision of his order. The Superintendent of the Revenue Commissioner's office communicated the result of the Revenue Commissioner's order to the petitioner by his letter dated 16-2-1951 which was received by the petitioner on 19-2-51. The contents of that

letter are as follows:

"The R. C. has been pleased to pass orders on the above mentioned case on 9-2-51. The petition has been rejected."

The reasons given by the Revenue Commissioner for rejecting the revision petition were, however, not communicated to the petitioner. Then the petitioner applied for a copy of the order of the Revenue Commissioner on 21-2-1951 and received it on 8-3-1951. The application to the Revenue Commissioner u/s 29(2) of the Act for stating a case was filed on 30-4-1951. If the time taken for obtaining a copy of the Revenue Commissioner's order u/s 28 be excluded, that application would be within the time-limit of sixty days prescribed in Section 29(2). If, however, that period is not excluded the application is clearly time-barred.

The Revenue Commissioner took the view that the application was time-barred and that he had no jurisdiction to condone the delay and the main question for consideration now is whether the view taken by the Revenue Commissioner on the question of limitation is correct.

3. Sub-section (2) of Section 29, Limitation Act says clearly that

"for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of Sections 4, 9 to 18 and 22 shall apply only in so far as, and to the extent to which, they are not "expressly" excluded by such special or local law".

There is no provision in the Orissa Agricultural Income Tax Act expressly excluding those sections of the Limitation Act. Consequently, by virtue of Section 29(2) Limitation Act, Section 12 of that Act must be held to apply to the provisions of the Orissa Agricultural Income Tax Act. Sub-section (2) of Section 12, Limitation Act says that in computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for review of judgment, the time requisite for obtaining a copy of the order of the lower Court should be excluded.

Mr. Mohapatra, on behalf of the Income Tax authorities, urged two grounds against the application of Section 12(2), Limitation Act to the present case. Firstly, he urged that by virtue of Section 44, Orissa Agricultural Income Tax Act, it must be, held that the provisions of Section 12, Limitation Act were expressly excluded. Secondly, even if it be held that Section 12(2) applies that sub-section is expressly limited to (i) appeal, (ii) application for review of judgment, & (iii) application for leave to appeal & cannot be extended to an application to the Revenue Commissioner to state a case for the division of the High Court. In my opinion, neither of these two contentions can be accepted. Section 44 Orissa Agricultural Income Tax Act runs thus:

"In computing the period of limitation prescribed for any appeal under this Act, the day on which the order complained of was made and the time requisite for

obtaining a copy of such order shall be excluded."

Doubtless, the language of this section is almost identical with that of Sub-section (2) of Section 12, Limitation Act; the only difference being the express restriction of the provisions of Section 44, Orissa Agricultural Income Tax Act to appeals only. Mr. Mohapatra urged that in view of this express provision in the Orissa Agricultural Income Tax Act itself it should be held that the Legislature intended to exclude Section 12, Limitation Act altogether.

Such an inference may follow by Implication: but I cannot accept Mr. Mohapatra's contention that Section 44, Orissa Agricultural Income Tax Act has the effect of "expressly" excluding Section 12, Limitation Act. The language of Section 29(2), Limitation Act is clear and unambiguous. Unless there is express exclusion in any special or local law, Section 12, Limitation Act would apply to all applications under that special or local law.

It is true that in many instances an inference which follows by necessary implication from a provision of a statute is taken to be equivalent to an Inference that arises out of an express provision in the statute. But in view of the language of Section 29(2), Limitation Act inferences arising out of necessary implication should not be taken into consideration in deciding whether Section 12, Limitation Act would apply or not. It is true that this will lead to some overlapping so far as appeals under the Orissa Agricultural Income Tax Act are concerned, but in respect of other classes of applications under that Act, Section 12, Limitation Act would come into operation.

4. The second objection raised by Mr. Mohapatra is more difficult to meet sub-section (2) of Section 12, Limitation Act is, in terms, limited to (i) appeal, (ii) application for review of judgment and (iii) application for leave to appeal. On a strict construction, therefore, that sub-section cannot help the petitioner in respect of an application u/s 29 (2), Orissa Agricultural Income Tax Act to state a case for the decision of the High Court. But we notice that the corresponding provision in Section 66, Indian Income Tax Act as it stood prior to the amendments made in 1930 by Act 22 of 1930 had been given a liberal construction by three High Courts (See -- Mohan Lal Hardeo Das Vs. Commr. of Income Tax, "Ramanath Reddiar v. Commr, income tax" AIR 1928 Rang 152 (B), and "Md. Havat Haji Md. v. Commr. Income Tax, Punjab & NWPP" AIR 1929 Lah 170 (C)).

In all those decisions it was held that Section 12, (2), Limitation Act would apply in respect of an application to the Income Tax authority to state a case-under Section 66(1), Income Tax Act. Doubtless, so far as Income Tax law was concerned, the Legislature gave recognition to these decisions by inserting Section 67A by the amending Act 22 of 1930. But the reasons given by the learned Judges for giving such a liberal construction seem to be quite convincing and may be adopted in the present instance also.

5. For instance in AIR 1928 Rang 152 (B) it was pointed out that unless an

assessee knew the reasons given by the Income Tax authority in rejecting his appeal or revision, as the case may be, it would be manifestly impossible for him to make up his mind whether a point of law arose out of the order of the Income Tax authority. Similarly, in the present instance unless the petitioner is aware of the contents of the order of the Revenue Commissioner rejecting his revision petition he will not be in a position to make up his mind whether any question of law arises out of that order so as to Justify a reference to the High Court u/s 29 (2) Orissa Agricultural Income Tax Act.

A mere bald communication to him by the office of the Revenue Commissioner to the effect that his revision petition has been rejected would not furnish the necessary material to enable him to make up his mind. Hence, it is absolutely necessary for him to obtain a copy of the order of the Revenue Commissioner and the time requisite for obtaining such a copy should ordinarily be excluded.

In Mohan Lal Hardeo Das Vs. Commr. of Income Tax, some other reasons have been given by the learned Judges for giving a liberal construction to Section 12(2), Limitation Act while applying it to an application u/s 69 (1), Income Tax Act. I would, with respect, adopt those reasonings in the present instance also.

6. We are not aware if any statutory form has been prescribed by the Government in exercise of then rule-making power dealing with the contents of an application to the Revenue Commissioner u/s 29 (2), Orissa Agricultural Income Tax Act. The Indian Income Tax Rules, 1922, however prescribe a special form (Form R(T)) (see Rule 22A) for an application u/s 66(1), Income Tax Act and the State Government may consider the advisability of prescribing a similar form adding therein a special provision for enclosing a copy of the order of the Revenue Commissioner or of any other Agricultural Income Tax authority against whose decision an application u/s 29(2), Orissa Agricultural Income Tax Act was made.

We would also suggest that Section 44, Orissa Agricultural Income Tax Act may be amended on the lines of Section 67A, Indian Income Tax Act so as to include within its scope not only appeals but also revisions and applications u/s 29, Orissa Agricultural Income Tax Act.

7. I would, therefore, in exercise of the powers conferred by Sub-section (4) of Section 29, Orissa Agricultural Income Tax Act set aside the order of the Revenue Commissioner dated 16-5-51 and direct him to treat the application u/s 29(2) of that Act filed before him as having been filed within the period of limitation and dispose of it according to law. Hearing fee of Rs. 150/- should be paid to the petitioner.

Panigrahi, C.J.

8. I am in entire agreement with the view taken by my learned brother of the applicability of Section 12, Limitation Act to the present case. I would also endorse his suggestion that Section 44 may be so amended as to take within its

scope applications and revisions under the Act.

9. I would like however to record my view on the true meaning of Section 29 (2), Orissa Agricultural Income Tax Act, 1947. That sub-section reads as follows:

"29 (2). Within sixty days of the date on which he is served with notice of an order u/s 25 or 26 or of an order u/s 28, enhancing an assessment or otherwise prejudicial to him, or of a decision by the Revenue Commissioner u/s 27, the assessee in respect of whom the order or decision was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Revenue Commissioner to refer to the High Court any question of law arising out of such order or decision, and the Revenue Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

Provided that a reference shall lie from an order u/s 28 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order u/s 25 or 26 revised by the order u/s 28:....."

There are two other provisions to this subsection, but they are not relevant to the point at issue. If this sub-section is analysed it will be found that the assessee is entitled to file an application requiring the Revenue Commissioner to refer to the High Court any question of law arising out of such order or decision. The proviso makes it clear that (1) the reference can be made from an order of the Revenue Commissioner only on a question of law and (2) the question of law which may be referred to the High Court must arise out of an order passed by the Revenue Commissioner u/s 28.

The other requirement is that the application should be made within sixty days of a particular date. The question is: How is the period of sixty days to be computed? The language of Sub-section (2) of Section 29 warrants the Inference that the Legislature has made a distinction between "date of notice of the order" and "date of order". The sub-section says while referring to the orders under 8, 25 or 26, that the application should be filed within sixty days of the date on which he was served with a notice of the order. If mere notice of the order was contemplated then there was no need for the words "or of an order u/s 28". The language of the sub-section would then have been: "within sixty days of the date on which he was served with notice of an order u/s 25 or 28 or 28."

It will also be noticed that the orders u/s 25 or Section 26 relate to the liability of assessment and enhancement, while Section 28 gives the Revenue Commissioner very wide powers to revise the order of the appellate authority u/s 25 or 26. He may make further enquiries or cause enquiries to be made and pass such orders as he thinks fit. These orders are to become final subject to reference to the High Court u/s 29. Such reference can be made only if there is a question of law arising from an order passed u/s 28.

The order was not pronounced in the presence of the assessee or of his lawyer. It is, therefore, impossible for the assessee to know what the contents of the order are, so that he may be in a position to formulate the question of law arising out of it. He was served only with a notice that the order was against him, namely, that his application had been refused. This is not sufficient compliance with the language employed in Sub-section (2) of Section 29. If the order had been pronounced in his presence the assessee would immediately have asked for a copy and filed his application within sixty days of the date of the order.

He was merely intimated of the result of his application without any indication being given of the contents of the order. It should be noticed that throughout the section a distinction has been maintained between "date of an order" and "date on which he is served with a notice of an order". The second proviso to Sub-section (2) of Section 29 says that

"in the case of a reference from an order u/s 25 or 26 In "computing the period of sixty days from the date on which the assessee was served with the notice of the said order" etc.

The third proviso to the sub-section, which deals with an order u/s 28 says that

"the assessee may, within thirty days from the date on which he receives notice of the order passed by the revisional authority.....withdraw his application" etc.

Sub-section (3) of Section 29 says that the assessee "may apply, within six months from the date on which he is served with notice of refusal". Subsection (4) says that

"the assessee may, within two months from the date on which he is served with notice of the order of the Revenue Commissioner, apply to the High Court."

It is, therefore, not without purpose that Sub-section (2) of Section 29 speaks of "notice of an order u/s 25 or 26 or of an order u/s 28" thus making a distinction between the order itself and the notice of the order.

10. I would, therefore, hold that the Revenue Commissioner was not right in the view he took that the application of the assessee was barred by limitation.