

Commissioner of Income-Tax, Bombay City I

Vs

Filmistan Ltd.

Civil Appeal No. 451 of 1960

(J. C. Shah, M. Hidayatullah, J. L. Kapur JJ)

21.02.1961

JUDGMENT

KAPUR, J. –

This is an appeal pursuant to a certificate of the High Court of Bombay under section 66A(2) of the Indian Income-tax Act (hereinafter called the "Act"). For the year of assessment 1949-50 the respondent was assessed to a sum of Rs. 1,80,646-14-0 as income-tax and super-tax on June 2, 1954. A notice of demand under section 29 of the Act was served on the respondent to pay that amount on or before July 17, 1954. On his application the respondent was allowed to pay by installments. The last instalment of Rs. 30,646-14-0 was payable on or before March 20, 1955. As there was a default in the payment of this instalment the Income-tax Officer on March 31, 1955, imposed a penalty of Rs. 3,000 under section 46(1) of the Act. On April 20, 1955, the respondent filed an appeal to the Appellate Assistant Commissioner but by that date the last instalment had not been paid and it was paid on May 16, 1955. The Income-tax Officer raised a preliminary objection before the Appellate Assistant Commissioner that the

"Whether the appeal filed before the Appellate Assistant Commissioner on 20th April, 1955, became a proper and complete appeal though barred by limitation and the Appellate Assistant Commissioner should have decided the question of the condonation of delay ?"

The High Court answered the question in the affirmative. The Commissioner of Income-tax has come in appeal against this judgment.

Appeals are provided against assessments under section 30 of the Act. There is a proviso to section 30(1) in regard to the payment of taxes in the following words :

"Provided that no appeal shall lie against an order under subsection (1) of section 46 unless the tax has been paid."

The controversy between the parties revolves round the words "no appeal shall lie". The contention which was raised before us was that these words mean that there is no right of appeal till the tax paid and, therefore, if the tax has not been paid the memorandum of appeal cannot be filed and if filed it is merely a waste paper. In our opinion the meaning of the words "no appeal shall lie" in the proviso is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until the tax has been paid. If, for instance, the memorandum of appeal is filed on the 20th day, i.e., 10 days before the period of limitation expires and the tax is

paid within the rest of the 10 days, the appeal will be a proper appeal; it will be within time and no question of limitation will arise but if the tax is paid after the period of limitation as expired it will be taken to have been filed on the day when the tax is paid even though the memorandum of appeal was presented

The appeal is without force and is, therefore, dismissed with costs.

Appeal dismissed.

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