

ORISSA HIGH COURT

Ramanarayan Das Madanlal

Vs

Commissioner of Income tax

Special jurisdiction Case No. 6 of 1947

(Ray, C.J. and Panigrahi, J.)

28.03.1950

JUDGMENT

Ray, C.J.

1. Under Section 66, Income tax Act, this Court asked the appellate Tribunal to state a case which has since been done. The question referred to us are :

"(1) Whether the order passed by the Appellate Commissioner, dismissing the assessee's appeal on the ground of its incompetence, according to the proviso to sub-section (1) of Section 30 of the Act, is one under Section 31 and as such appealable under Section 33(1) of the Act, and

(2) Whether such an order passed before expiry of the time either as originally fixed or later extended by competent authority for payment of the tax is good in law."

2. Of the two questions, the second one strictly falls within the scope of the appeal before the Appellate Tribunal in the event of our answer to question No. (1) being in the affirmative. When the appeal goes back to the Appellate Tribunal it will be for them to consider whether the order of extension, if any, granted by the income tax authorities was a valid, order and would conduce to the assessee being considered for the purpose of the proviso to Section 30 as one who has not committed any default, or who has not been in arrears in respect of income-tax. We have not been posted with all the facts and circumstances which should have enabled us to answer this question with any amount of certainty. We therefore leave the question at large.

3. With regard to question No. (1), our answer should be in the affirmative. As the point has been thoroughly discussed in our preliminary order issuing a writ to the Tribunal to state a case, I do not like to reiterate what I have stated before. At this stage, a decision of the Bombay High Court Reports, *Commissioner of Income Tax, Bombay City v. Mysore Iron and Steel Works*¹, has been

cited before us. The position, however, is clear, namely, that the order impugned of the Appellate Assistant Commissioner cannot but be one under Section 31 of the Act. According to sub-section (1) of Section 30, certain orders as defined in the said sub section are made

¹1949-17 I.L.R. 478; (AIR (36) 1949 Bom. 400)

appealable. An order under sub-section (1) of Section 46 that is, an order levying a penalty upon an assessee for non-payment of income-tax within the due date, is one such. The proviso limits the right of appeal to those persons who must have paid the tax, or in other words, to those who must not have been in arrears in respect of the payment of the tax. When an appeal is filed against this order, it is a matter for consideration of the appellate authority whether such an appeal does lie, or, in other words, whether the appeal is competent, that is to say, whether the assessee appellant has fulfilled the conditions which are pre requisite for an appeal. Within the provisions of Section 31 there is nothing to empower an appellate authority to pass any order by way of admitting an appeal. Admission of an appeal has not been sufficiently provided for within the purview of the Income-tax Act, but it is not strange to the scheme of the Act. By contrast, I refer to the admission of an appeal as provided for in the concluding portion of sub-section (a) of Section 30. That sub-section provides, in the main, a time limit for appeals of various classes, the starting points of such time limits varying according to the circumstances of each of the cases mentioned therein. The sub-section concludes with the following words :

"But the Appellate Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period."

This makes it clear that the stage of admission is interposed between the presentation of an appeal and its hearing and disposal under Section 31 in cases in which an appeal is not presented within the prescribed time-limit. The necessary inference, therefore, is that in all other cases the appeals, as soon as presented, must come up for decision under Section 31.

4. Looking to how the matter was treated by the Appellate Assistant Commissioner in the instant case, it is clear that he had fixed a date and place for the hearing of the appeal and had invited all the concerned parties. In case we thought any notional stage of admission to be intervening, which according to me is not so much necessary, that stage, according to the appellate authority, had already passed. He had set down the appeal for the purpose of hearing. The matter of hearing is provided for in Section 31 and Section 31 alone. There is no other provision in the Act under which an appeal could be disposed of. Under the circumstances, the order disposing of the appeal is an order under Section 31. Its character as an order under that section does not depend upon the ground on which the order proceeds. The ground may be one of a preliminary character but when decided one way or the other, and particularly when it is decided against the assessee, it goes to the root of the matter and amounts to a final disposal of the appeal.

5. In the order calling upon the tribunal to state a case, we made a reference to a Full Bench

decision of the Patna High Court in which a similar question, though not the same, was debated and it was decided in the same way in which we propose to answer the question before us. As against that, Mr. Das, learned standing counsel, invited our attention to the Bombay case already referred to. The ratio of Bombay decision is that the order in question was one within sub-section (2) of Section 30 to which I have referred. Such procedure as that of admission is, however, not to be found within the language of the proviso which declares an appeal to be incompetent in cases where the appellant is found not to have paid the assessed tax. That was really the point on which the Bombay High Court distinguished the decision of the Patna High Court. Under the circumstances, apart from our feeling ourselves bound by the Patna decision, we are on considerations of merits, of opinion that the Bombay decision does not apply to the facts of the case before us and that the question referred to us must be answered in the affirmative.

6. In the result, the Appellate Tribunal should now take up the appeal, entertain it, and dispose of it on merits. The petition is allowed with costs. Hearing fee is assessed at five gold mohurs.

Panigrahi, J.

7. I agree.

Reference answered.