

PUNJAB-HARYANA HIGH COURT

Dewan Chand

Vs

Commissioner of Income-Tax

(Weston and Khosla, JJ.)

15.11.1950

JUDGMENT

Khosla, J.

1. There are two matters before us. The first (Civil Reference No. 10 of 1949) is a reference under Section 66(1) of the Indian Income-tax Act by the Income-tax Appellate Tribunal, Bombay, in the order of reference the following question of law has been referred for our decision:

"Whether the order of the Appellate Assistant Commissioner, Delhi, refusing to condone the delay and rejecting the appeals as time barred on the date of their hearing was an order passed under Section 31 or under Section 30, Clause (2) of the Income tax Act?"

2. This reference was made upon an application by Diwan Chand-Atma Ram, a firm of Simla, in which it was prayed that three questions be referred to the High Court under Section 66(1), of the Income-tax Act, In the application seven questions in all were formulated but the prayer clause referred only to three. The Income-tax Appellate Tribunal took the view that there was in reality only one question of law arising in the matter and that the other two questions were merely corollaries to the first question, it, therefore, referred only one question namely, the one cited above for our decision. Messrs. Diwan Chand-Atma Ram were dissatisfied with this reference and have made an application to this Court (Civil Misc. 59 of 1950) in which they ask for a direction to the Income-tax Appellate Tribunal to state all the seven questions which were set out in the original application of the petitioners and also in the present application.

3. The manner in which this application arose was briefly as follows. The petitioners (Messrs. Diwan Chand Atma Ram) presented three appeals to the Appellate Assistant Commissioner of Income-tax against three different orders of the Income-tax Officer. These orders were (1) an order of regular assessment under Section 23(3) of the Income-tax Act, (2) an order under Section 25A of the Act and (3) an order under Section 2G-A, of the Act. These appeals were all

Bent by post and reached Date on 20-2-46. They were addressed to the Appellate Assistant Commissioner of Income-tax at the address known to the petitioners.

The Appellate Assistant Commissioner had in the meantime shifted his office and the new address was apparently not known to the petitioners. The packet containing the appeals could not be delivered on the 20th of February and was brought back to the post office by the postman. It was entrusted to another postman on the following day but this postman also could not deliver the packet. Finally on 22-2-46 the packet was delivered at the new address and the Appellate Assistant Commissioner of Income-tax sent a notice to the petitioners informing them of the date of hearing. The appeals should have been presented on the 20th of February 1946 and as the packet containing the appeals was not delivered until the 22nd, the appeals were barred by time. When the matter came up before the Appellate Assistant Commissioner on the date fixed he declined to extend the time and dismissed the appeals as barred by time. An appeal against this order of dismissal was preferred to the Income-tax Appellate Tribunal. The Tribunal took the view that the appeals had been dismissed under Section 30, and no order under Section 30 of the Act was appealable. Upon this the petitioners applied to the Tribunal for stating a question of law under Section 66(1) of the Act and the reference and the petition before us then followed.

4. There 13 in reality only one question requiring our decision namely, whether the order of the Appellate Assistant Commissioner of Income-tax declining to extend the time of limitation and dismissing the appeals, as barred by time is appealable or not. The other questions are really of no importance once this primary question is decided. Therefore the point for consideration is whether the order in the present case was passed under 3. 30 or under Section 31. There is no doubt that an order under Section 31 is appealable but an order under Section 30, is not appealable. This is clear from the wording of Section 33 of the Act.

5. Section 30 deals with the filing of appeals and their admission. The concluding portion of Sub-section (2) of this section is in the following terms: "But the appellate Assistant Commissioner may admit an appeal after the expiration of the period if ho is satisfied that the appellant had sufficient cause for not presenting it within that period." From this it appears that the formal admission of an appeal which is on the face of it barred by time can be made only if the Appellate Assistant Commissioner is satisfied that there was sufficient cause for delay in presenting the appeal. If he is not so satisfied or if he does not extend limitation and leaves the matter undecided it is clear that there has been no formal admission of the appeal even if an entry in the register of appeals has been made. The scheme of the Act contemplates that an appeal can only be heard under Section 31 on merits if the preliminary defect of limitation is not present or has been removed. In the circumstances from the wording of the section it appears to follow that in the present case the appeal was not heard on merits, it could not be said to have been formally admitted and the date of hearing fixed was merely for the purpose of determining whether time should be extended or not. The Appellate Assistant Commissioner declined to extend limitation and so the order dismissing the appeal was really an order passed under Section 30 and not under

Section 31. In this view of the matter it must be held that the order was not appealable.

6. Learned counsel for the petitioners relied upon two cases '*Gyan Manjari Kuari v. Commr. Of Income-Tax*', B & O reported as¹ and '*Ramanabayan Das v. Commr. Of Income-Tax*', B & O reported as (1950) 18 ITR 660 (Orissa). In both these cases the appeals were dismissed on what is usually called a preliminary point and it was held that the order was appealable. Neither of these appeals was dismissed as barred by time. In the first case '*Gyan Manjari Kuari v. Commb. Op Income-Tax, B. & O.*', the allegation of the assesses was that she had never got the demand notice. The Appellate Assistant Commissioner declined to enquire into the truth of this statement and dismissed the appeal. In the second case '*Ramanarayan Das v. Commr. Op Income-Tax, B. & O.*', the petitioner was assessed with income-tax and was asked to pay the amount by a certain date. On his failure to pay this amount he was ordered to pay a penalty amounting to Rs. 1000/-. His prayer for extension of time in the original instance was rejected but the inspecting Assistant Commissioner allowed him extension. He filed an appeal against the order of the Income-tax Officer after paying the penalty but it was held that he had not paid the tax in time and so his appeal was not competent. A further appeal was taken to the Appellate Tribunal but they took the view that the order dismissing the appeal as incompetent was not passed under Section 31. Division Bench of the Orissa High Court however, took the contrary view and held that the appeal was competent. The reasoning upon which the Judgment proceeds does to some extent support the case of the petitioners before us but tile facts of that case were different and the case is distinguishable, indeed the distinction was pointed out by the learned Judge himself who observed ;

"By contrast, I refer to the admission of an appeal as provided for in the concluding portion of Sub-section (2) of Section 30. That sub-section provides, in the main, a time-limit for appeals of various classes, the starting points of such time and limits varying according to the circumstances of each of the cases mentioned therein." The learned Judge then quoted the concluding portion of Sub-section (2) and observed: "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 oases the appeals, as soon as presented, must, come up for decision under Section 31."

There are two cases on the other hand which are more in point. The first of these '*Shivnath Prasad v. Commr, Of Income-Tax Central And United Provinces, Lucknow*'², was a case in which the appeal to the Appellate Assistant Commissioner was filed beyond time and it was held that an order dismissing such an appeal is not appealable, similarly, in '*Commr. Of Income-Tax, Bombay City v. Mysore Iron And Steel Works*'³, it was he'd that where the Appellate Assistant Commissioner does not extend limitation in respect of 311 appeal presented after the statutory period of thirty days the order dismissing the appeal is an order under Section 30 and is, therefore, not appealable. Chagla, C. J., in the course of his Judgment observed: "An assessce has

a statutory right to present an appeal within thirty days without any order being required from the Appellate Assistant Commissioner for admission of that appeal. But if the time prescribed expires, then that statutory right to present an appeal goes; and an appeal can only be entertained provided it is admitted by the Appellate Assistant Commissioner after condoning the delay. Therefore before an appeal could be admitted in this case, an order from the Appellate Assistant Commissioner was requisite that the delay had been condoned." With these observations with very great respect I find myself in entire agreement.

7. Learned counsel for the petitioners contended that in the present case the appeal had in fact been admitted as a notice informing the petitioners of the date of hearing was issued. The issuing of such a notice, however, does not imply that the appeal had been admitted in the sense contemplated by Sub-section (2) of Section 30. In fact, as pointed out by Chagla, C. J., in the above mentioned case, the admission of an appeal must follow extension of time. In the present case, it is clear that there has been no extension of the time or condonation of the delay and, therefore, the mere issue of a notice informing the petitioners of the date on which their appeal would be considered does not mean that their appeal had been admitted.

8. For the reasons given above, I would say in answer to the question referred to us by the Income-tax Tribunal that the order of the Appellate Assistant Commissioner in this case was an order under Section 30(2) of the Act and not under Section 31.

9. It is unnecessary to deal with the other questions set out in the petitioners' application as the answer to these questions must follow as corollaries to the answer proposed by me. The petition will be dismissed but I make no order as to costs.

Weston, C.J.

10. I agree.

Cases Referred.

1(1944) 12 ITR 59 (Pat)

2AIR 1935 All 572

3AIR 1949 Bom 400