

Mrs. R.V. Sarojini Devi Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Madras

Decided On : Oct-26-1988

Reported in : (1989)29ITD239(Mad.)

Judge : G Cheriyan, Vice-, T Rangarajan

Appellant : Mrs. R.V. Sarojini Devi

Respondent : inspecting Assistant

Judgement :

1. This is an appeal sought to be preferred by the transferor under the provisions of Section 269G of the Income-tax Act, 1961. The land transferred was 12 grounds 494 s. ft. with a building situated thereon, under Document No. 570/85 for an apparent consideration of Rs. 32,20,000. The Competent Authority passed an order dated 11-3-1988 under Section 269F(6) holding that the property was liable to be acquired. The order of the Competent Authority was served on the transferor personally on 29-3-1988 as per the acknowledgement of the Postal department in token of delivery of the registered letter which is on the records of the Revenue. The order of acquisition was, as stated above, dated 11-3-1988. Under the provisions of Section 269G, the appeal should have been filed within a period of forty five days from the date of the order or a period of thirty days from the date of service of a copy of the order on the transferor whichever period expired last. Forty-five days from the date of the order expired on 25-4-1988 and thirty days from the date of service of the order expired on 28-4-1988. With reference to the date of 28-4-1988, which is the later of the two dates, the appeal as filed on 25-5-

1988 is belated by 26 days. Accompanying the appeal is an affidavit by the transferor stating that she was 65 years' old and was keeping indifferent health and was originally staying at Madras and shifted to Kodaikanal under medical advice from April, 1988. The affidavit speaks of certain letters having been received at her house before she went to Kodaikanal when she was unwell and she had instructed her servant to forward these letters to the Auditor. It was only much later that she came to know that one of the papers which has been received at her house was an order of acquisition passed by the IAC (Acquisition) and immediately on knowing that the appellant directed her servant to contact her Auditor and get an appeal prepared and this was sent to her at Kodaikanal for signature. Thus, there was a delay in filing the appeal. It was requested that the delay should be condoned especially because she was a widow and there was none to look after her affairs.

2. The point that arises is whether the Tribunal has any powers to condone the delay with reference to the dates which we have set out. On behalf of the Revenue, reliance was placed on the proviso to Section 269G(1) which reads as under : Provided that the Appellate Tribunal may, on an application made in this behalf before the expiry of the said period of forty-five days or, as the case may be, thirty days, permit, by order, the appeal to be presented within such further period as may be specified therein if the applicant satisfies the Appellate Tribunal that he has sufficient cause for not being able to present the appeal within the said period of forty-five days or, as the case may be, thirty days.

3. The learned counsel for the assessee relied on the order of the Tribunal in Cyril Albert D'Souza v. IAC [1986] 15 ITD 685 (Bang.). He submitted that the decision of the Bench after adverting to the decision of the Madhya Pradesh High Court in CIT v. Trilokinath [1984] 147 ITR 613 was that the Tribunal had the power to condone delay. In that particular case, he stated, the Tribunal had condoned the delay and admitted the appeal. The learned counsel also submitted that the decision of the Punjab & Haryana High Court in Manoj Ahuja v. IAC [1984] 150 ITR 696 was also authority for the proposition that Section 5 of the Limitation Act applied to appeals filed under Section 269G and, therefore, where sufficient cause was shown, the Tribunal had the authority to condone the delay and admit the appeal.

4. The submission of the learned counsel was that Chapter XX-A is a code in itself and appeals as provided in this Chapter stood on a different footing from appeals arising out of assessments. Appeals arising out of assessments could be considered to be really extension of the assessment procedure whereas in appeals under Chapter XX-A relating to acquisition of property, the Tribunal decided proprietary rights vesting in a person, which was an entirely different matter from computing the income of a particular person from year to year. The learned counsel drew a further distinction by submitting that in the case of orders passed by the Tribunal in acquisition matters, a further appeal on a question of law was provided to the High Court as against a reference in relation to assessment matters. This was in conformity with the procedure which was followed in a Civil Court. According to him, therefore, the Tribunal while deciding an appeal under Chapter XX-A was "really a Court and the catena of decisions which went to hold that Section 5 of the Limitation Act would not apply to the Income-tax Tribunal since the Tribunal was not a Court would not really be clinching of the issue.

5. The next contention of the learned counsel was that where the Legislature intended that the Tribunal should not condone delay beyond a certain period as in the proviso to Section 256(1), the Legislature has stipulated the further period up to which alone the delay could be condoned, namely, 30 days from the date limitation had set in. In the present instance, the Legislature has not placed any time limit, and as such, the mere fact that there was mention that, provided an application was presented within the period of time limit, the Tribunal could permit the appeal to be presented after any length of time would not restrict the powers of the Tribunal to condone the delay in appropriate cases even if the application for condonation was presented along with the appeal after the expiry of the initial period of limitation as set out in Section 269G.6. The learned counsel further contended that on a consideration of the provisions in relation to appeals in Chapter XX-A, it could not be considered that the applicability of Section 5 of the Limitation Act was excluded. He further stated that in any event, as far as the application for extension of time contemplated under the proviso to Section 269G(1) was concerned, principles for condonation of delay stood on a different footing from the appeal itself, and as far as the time for presenting the application was concerned, in the absence of an express stipulation excluding the application

of Section 5 of the Limitation Act, Section 5 of the said Act could be invoked, and in appropriate cases the application could be permitted to be presented even after the stipulated periods of 45 days, or 30 days, as the case may be, for filing the formal appeal.

7. Summing up the arguments on the aforesaid issues, the learned counsel submitted that the Tribunal was a "court" looking to the definition of the term in various treaties such as *Corpus Juris Secundum*, etc., and, therefore, the provisions of Section 5 could be relied on by an assessee for seeking condonation of delay particularly because the provisions for appeal in Section 269G of the Act did not exclude the application of the provisions of Section 5 of the Limitation Act and the present law could not be considered to lay down any contrary provision to the terms of Section 5 as contemplated, within the meaning of Section 29(2) of the Limitation Act.

8. The learned Departmental Representative, on the other hand, stated that the latest decision of the Andhra Pradesh High Court in *B. Subba Rao v. IAC* [1987] 167 1TR 757, relying on the judgment of the Supreme Court in the case of *Sakuru v. Tanaji* AIR 1985 SC 1279 and after referring to the decision of the Punjab & Haryana High Court in *Manoj Ahuja's case* (supra) and the decision of the Madhya Pradesh High Court in *Trilokinath's case* (supra), which were relied on by the learned counsel for the assessee in the present case and distinguishing the same had come to the conclusion that the provisions of Section 5 of the Limitation Act could not be applied in respect of appeals before the Tribunal since the Tribunal was not a Court and the provisions of Section 29(2) of the Limitation Act did not have the effect of extending the application of the Limitation Act to the Income-tax Appellate Tribunal. He also submitted that the issue whether Section 5 of the Limitation Act could be invoked in relation to appeals before the Income-tax Appellate Tribunal had come up for consideration in respect of matters arising under Section 66(1) of the Income-tax Act, 1922 and the unanimous view of three High Courts, i.e., the Kerala High Court in *CIT v. P.C. Vareedkutty* [1971] 81 ITR 206, the Calcutta High Court in the case of *CIT v. Assam Oil Co. Ltd.* [1972] 83 ITR 456 and the Gujarat High Court in the case of *CIT v. Western India Engg. Co.*

Ltd. [1970] 77 ITR 165 was that the provisions of Section 5 of the Limitation Act could not be invoked in relation to appeals before the Income-tax Appellate Tribunal because the Income-tax Appellate Tribunal was not a Court. The learned Departmental Representative also relied on the decision of the Delhi High Court in the case of Deen Dayal Goyal v. IT AT [1986] 158 ITR 391 where he submitted that the High Court had considered the impact of the provisions of limitation under Section 269G and restriction of the powers of the Tribunal to condone delay in the light of public policy and had eventually come to the conclusion that the provisions of Section 5 of the Limitation Act could not be pressed into service by an appellant and also the provisions of Section 29 of the Limitation Act did not further the case of the appellant.

9. Yet another decision relied on to support the stand of the Revenue was that of the Patna High Court in IAC v. Kedar Nath Jhunjunwalla [1982] 133 ITR 746.

10. Had this been an appeal arising out of an income-tax assessment, since there was an earlier decision of a Bench of this Tribunal in Cyril Albert D'Souza's case (supra) which took the view that delay could be condoned in appropriate cases even in an appeal under Chapter XX-A and such view has also found favour with the Punjab & Haryana High Court in the case of Manoj Ahuja (supra), we would have referred the present issue to the President for considering whether a Special Bench should be constituted, if we were ex facie inclined to the view that the earlier Bench decision required reconsideration. However, Section 269Gr categorically states that the provisions of Section 255 (except Sub-section 3 thereof) shall apply to the Tribunal in disposing of appeals under Chapter XX-A. Sub-section (3) is the sub-section which relates to the constitution of Special Benches and, therefore, in respect of appeals under Chapter XX-A the question cannot arise of our placing the matters before the President with the request for constituting a Special Bench. An event of the matter being referred to a larger number of Members can arise only where on a difference of opinion a reference is made to the President under Section 255(4) and the President considers the matter should be heard by more than one other Member as Third Member. At the present stage, therefore, we have to perforce consider the arguments on merits in the first instance.

11. Apart from the arguments mentioned by us earlier as having been advanced by the learned counsel, he had also put forth a contention that since the secrecy provisions had now been removed in respect of proceedings before the Tribunal and the proceedings were open to the public except in cases where the Tribunal decided otherwise, the principal reason which weighed in considering that the Tribunal was not a "court" (see the observations of the Madras High Court in *R.M.Seshadri v. Second Addl. ITO* [1954] 25 ITR 400 at 405) : Whatever may be the precise definition of a Court it is not difficult to reach the conclusion that the Income-tax Appellate Tribunal as constituted under the Income-tax Act is not a 'Court'.

Its proceedings are not public vide Section 54.

no longer existed. The Madras High Court in the very case relied on by the learned counsel had stressed on the fact that merely because there were certain provisions in the Act by which some of the powers exercisable by the Courts under the Civil Procedure Code could be exercised by the Tribunal, it did not convert the Tribunal into a "court". Reading the judgment as a whole, we are unable to agree with the learned counsel that merely because the secrecy provisions have now been removed in respect of proceedings before the Tribunal by the Tribunal Rules, the Tribunal gets converted into a "court". There is, in particular, a very illuminating discussion on whether the Tribunal is a "court" or not in the case of *Western India Engg. Co. Ltd.* (supra) and having regard to this elaborate discussion which refers to the decisions of the Supreme Court in *CIT v. Walchand & Co. (P.) Ltd.* [1967] 65 ITR 381 and *ITO v. M.K. Mohammed Kunhi* [1969] 71 ITR 815 and also the decision of the Madras High Court in the case of *R.M. Seshadri* (supra), we would come to the conclusion that the Tribunal cannot be considered to be a "court" in terms of the meaning of that expression in Section 5 of the Limitation Act. We are also unable to subscribe to the view canvassed for by the learned counsel that when dealing with appeals under Chapter XX-A, the Tribunal is a "court". In Chapter XX-A itself there is a definition of "court" in Section 269A(c) and this expression "court" is used in other provisions in this Chapter such as Section 269J, 269K, etc., which relate to determination of the compensation where there is damage to the property, deposit of compensation, etc. Having come to the

conclusion that the Tribunal is not a "court" within the meaning of the term of Section 5 of the Limitation Act having regard to the various judicial pronouncements, Section 5 of the Limitation Act does not ex facie apply to appeals to the Tribunal under the provisions of Section 269G. The arguments based on the impact of the provisions of Section 29 of the Limitation Act have been considered by the Delhi High Court in the case of Deen Dayal Goyal (supra). There, after observing, to quote : We shall assume for the purpose of these cases (as contended for by the learned counsel for the appellant), (i) that the provisions of Section 29(2) of the Limitation Act can be invoked for interpreting the provisions of the Income-tax Act, 1961 ; (ii) that this provision is attracted not only in respect of proceedings before courts but also in respect of proceeding's before the Tribunals like the Income-tax Appellate Tribunal ; and (iii) that, therefore, the provisions of Section 4 to 24 of the Limitation Act will apply in so far as and to the extent to which they are not expressly excluded by the provisions of the Income-tax Act, 1961.

Granting these premises in favour of the appellant, the short question that comes up for our consideration is as to whether the proviso to Section 269G(1) can be said to expressly exclude the application of Section 5 of the Indian Limitation Act in regard to appeals before the Tribunal under that section.

and considering the entire scheme of the provisions of the Chapter relating to "Acquisition", the Delhi High Court: came to the conclusion in the light of public policy in particular that the proviso to Section 269G(1) cannot be interpreted in such a way as to permit the condonation of delay unless an application is preferred before the Tribunal before the expiry of the period of limitation specified in Sub-section (1) of Section 269G.12. Having regard to the decision of the Delhi High Court to which we have adverted, as also the very recent decision of the Andhra Pradesh High Court in the case of B. Subba Rao (supra) delivered on March 11, 1987, we agree that preponderance of judicial opinion on the point is that provisions of Section 5 of the Limitation Act cannot be called in aid by an appellant in seeking any condonation of delay when an appeal is not presented within the statutory period prescribed under the proviso to Sub-section (1) of Section 269G. We may mention that the aspect of non-application of the

provisions of Section 5 of the Limitation Act to the Income-tax Appellate Tribunal because the Tribunal was not a Court had not been adverted to or argued before the Tribunal in the case of Cyril Albert D'Souza (supra), to which one of us, i.e., the Judicial Member, was a party.

13. We are also not in a position to persuade ourselves with reference to the arguments as put forth that different considerations should prevail in deciding whether there is power to condone delay in presenting an application after the period of limitation seeking for extension of time to present an appeal, in view of the principles of public policy enunciated by the Delhi High Court in the case of Deen Dayal Goyal (supra).

14. Since we agree on the conclusion in view of the preponderance of judicial opinion referred to that before the Tribunal the provisions of Section 5 of the Limitation Act cannot be relied on for seeking condonation of delay either in presenting the appeal or in presenting an application after the period of limitation had expired for extension of time to file an appeal, there is no difference of opinion between us and the question of making any further reference under the provisions of Section 255(4) does not arise.

15. There was also the suggestion made at the Bar on behalf of the assessee which was to the effect that the term "court" in Section 5 of the Limitation Act should be construed to include Tribunal also on the ground that Article 141 of the Constitution stated that the law declared by the Supreme Court was binding on all courts in India and it was settled law that all Tribunals within the territory of India are bound by the law so declared. Therefore, the term "court", it was suggested, should be interpreted to include Tribunals also specially since even in the Constitution in certain Articles there is a reference to both "courts" and "Tribunals" such as Article 227. We are called upon to interpret the term "court" as occurring in a statute. Entries in the Constitution have to be interpreted in the widest amplitude.

Interpretations to be given with reference to a term in a statute is often narrower in concept and the term "court" as occurring in Section 5 of the Limitation Act has been so interpreted by preponderance of judicial pronouncements as to not include Tribunals. Apart from this, when the law declared by the Supreme Court is

stated to be binding on all courts within the territory of India, it follows, it will be binding on all Tribunals also because the Tribunal is bound by the decision of the jurisdictional High Court and such High Court is bound by the decisions of the Supreme Court. Therefore, Article 141 as worded is comprehensive enough to clearly bring within its purview all Tribunals also.

16. The learned Departmental Representative also submitted that since in respect of an appeal preferred by the transferee on an earlier date where the order had been served on the transferee on a later date, the Tribunal in IT Acq. No. 35/Mds./88 had held that the Tribunal had no powers to condone the delay, the same decision should hold good here also. According to the learned counsel for the assessee, the arguments put forth therein differed. Under the Scheme of Chapter XX-A, both the transferor and the transferee have separate rights of appeal. The appeal before us is that of the transferor. With reference to the same, we have independently examined on the facts and bearing in mind the law applicable, whether we have powers to entertain the request for condonation of delay. It is, therefore, not necessary for us to go into the facts in the transferee's case. Since we have held we have no powers to condone delay in the present case, the appeal of the transferor has to be dismissed as barred by limitation. In the view that we have taken, we do not go into the merits of the reasons which caused the delay. Suffice it to say that arguments that hardship may result in genuine cases if such an interpretation of law is taken were adduced before the High Court of Delhi in the case of Deen Dayal Goyal (supra), and the Andhra Pradesh High Court in the case of B. Subba Rao (supra), but their Lordships held, after a consideration of the same, that the conclusion arrived at that the Tribunal did not have powers to condone delay, could not be deviated from in the light of the language of the statute as obtaining.

17. The result is the appeal is dismissed in limine as barred by limitation. his dwelling place. It was held that the assessee could not be assessed as resident. It is to be noted that in this case the assessee had not established his household in India. He was a South African national and his wife and children were residing in his sister's house. In our case, there was an organised household of assessee in India unlike in that case. Hence, that case has no application.

16. Another decision relied on by Shri Desai is CIT v. K.S. Ratnaswamy [1980] 122 ITR 217 (SC). In that case the assessee was a resident of Ceylon and had his own properties and business there. All his eight children were born and brought up in Ceylon. There was an ancestral house in India which he visited on occasional visits to India. It was held that he could not be said to have maintained or caused to be maintained a dwelling house in India. In that case there was evidence that the assessee was more a guest in the family house than an inhabitant of his own house or home and further there was no separate portion reserved for him. In our case the assessee's residence in flat in Bombay is not that of a guest but as a wife. In fact she can legitimately call it as her own home. Hence, the above decision is of no assistance.

17. Lastly, Shri Desai relied on the decision in Moosa S. Madha and Azam S. Madha v. CIT [1973] 89 ITR 65 (SC), for the proposition that burden was on the department. In our case all facts are known and undisputed and the question is one of drawing inference from them. The only inference that could be drawn from the facts on record is that the assessee had maintained, or in the alternative, cause to be maintained a dwelling place in India for more than 182 days in the relevant year.

We confirm the order of the authorities below.

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