

(2003) 05 P&H CK 0064

High Court Of Punjab And Haryana At Chandigarh**Case No:** Income Tax A. No. 30 of 2000

Commissioner of Income Tax

APPELLANT

Vs

V.K. Sood Engineers and
Contractors (P.) Ltd.RESPONDENT

Date of Decision: May 9, 2003**Acts Referred:**

- Income Tax (Appellate Tribunal) Rules, 1963 - Rule 8, 9, 9(1), 9(3)
- Income Tax Act, 1961 - Section 253(2)

Citation: (2004) 186 CTR 162 : (2003) 264 ITR 313**Hon'ble Judges:** N.K. Sud, J; G.S. Singhvi, J**Bench:** Division Bench**Advocate:** R.P. Sawhney and V.P. Malik, for the Appellant; Munisha Gandhi, for the Respondent**Final Decision:** Allowed

Judgement

G.S. Singhvi, J.

In this appeal filed u/s 260A of the Income Tax Act, 1961 (for short, the "Act"), the Revenue has prayed for determination of the following substantial questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the Revenue's appeal in limine merely on technical point and without adjudicating the issues on merits ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that it was a mandatory requirement of law to set forth the grounds of appeal in the memorandum of appeal and the failure to do so does not fall under the category of a rectifiable defect ?

(3) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that in the peculiar facts of the case the

appeal presented by the Revenue in the Tribunal on May 6, 1994, wherein no grounds of appeal were set forth in the memorandum of appeal, was not to be admitted, although Sub-rule (3) of Rule 9 state that the Tribunal may in its discretion, accept a memorandum of appeal which is not accompanied by all or any of the documents referred to in Sub-rule (1) ?"

2. The respondent V. K. Sood Engineers and Contractors (P.) Ltd., Chandigarh (hereinafter described as the assessee), is engaged in the business of executing civil contract works. It filed a return on December 27, 1990, for the assessment year 1990-91 showing net loss of Rs. 57,774. Vide order dated December 23, 1992, the Assessing Officer framed the assessment u/s 143(1) of the Act at a total income of Rs. 3,15,14,310 by making the following additions :

(1) Arbitration award of Rs. 2,49,82,566 ;

(2) Interest received on fixed deposits Rs. 13,06,709 ;

(3) Risk and cost expenditure Rs. 42,38,493.

3. He also disallowed the expenses, interest and depreciation allowance to the tune of Rs. 10,18,662 and made a further addition of Rs. 25,655 on account of bonus.

4. The Commissioner of Income Tax (Appeals), Chandigarh (for short, "the CIT(A)"), allowed the appeal of the assessee vide his order dated February 4, 1994, and remanded the case to the Assessing Officer with a direction to reframe the assessment.

5. Feeling dissatisfied with the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal on May 6, 1994, before the Income Tax Appellate Tribunal, Chandigarh Bench (for short, "the Tribunal"), which was summarily dismissed vide order dated August 5, 1999, on the ground of non-compliance of Section 253(2) of the Act read with Rules 8 and 9 of the Appellate Tribunal Rules, 1963 (for short," the 1963 Rules").

6. We have heard learned counsel for the parties and carefully perused the record. We have also gone through the relevant statutory provisions. A reading of order dated August 5, 1999, shows that the appeal presented by the Revenue in the Registry of the Tribunal, on May 6, 1994, was not accompanied by the grounds of appeal which ought to have been filed as per the requirement of Rule 8 of the 1963 Rules. On May 10, 1994, a communication is said to have been issued by the Registry of the Tribunal to the Assessing Officer pointing out that copies of the grounds of appeal had not been filed (according to the Revenue, the said letter was not received by the Assessing Officer). After four years and three months, the matter was listed before the Tribunal on August 26, 1998. On finding that the grounds of appeal had not been filed, the Bench issued notice to the Revenue for October 26, 1998, to show cause as to why the appeal may not be dismissed in limine. On September 16, 1998, the representative of the Revenue filed grounds of appeal

signed by Shri S. K. Chopra, Assistant Commissioner of Income Tax (Investigation-II), Chandigarh. The Departmental Representative also submitted that the memorandum of appeal prepared on the basis of the grounds approved by the Commissioner of Income Tax was not filed though the same was duly signed by the then Assessing Officer--Shri R. L. Chhanalia, Assistant Commissioner of Income Tax (Investigation Circle-I), Chandigarh. He explained this lapse by stating that Shri R. L. Chhanalia did not have adequate experience of filing appeals being fresh from the Academy at Nagpur and also because he was having some personal problems.

7. After considering the explanation given by the Revenue, the Tribunal dismissed the appeal with the observation that the Department was guilty of gross negligence in prosecuting the matter. The Tribunal observed that the grounds of appeal which were approved by the Commissioner of Income Tax in May, 1994, were not filed and those filed in September, 1998, were not approved by the Commissioner and this was clearly indicative of the casualness with which the Revenue had treated the issue relating to the filing of the grounds of appeal.

8. In our opinion, the reasons assigned by the Tribunal for declining to accept the grounds of appeal filed in response to show cause notice issued on August 26, 1998, are legally unsustainable and the lapse committed by the Department in not filing the grounds of appeal along with the memorandum of appeal dated May 6, 1994, did not justify dismissal of the appeal in limine, more so because in response to the notice issued on September 26, 1998, the Departmental Representative had filed grounds of appeal duly signed by Shri S. K. Chopra, Assistant Commissioner of Income Tax (Investigation Circle-11), Chandigarh.

9. Section 253(2) of the Act lays down that if the Commissioner is not satisfied with the order passed in appeal, he may direct the Assessing Officer to appeal to the Appellate Tribunal. Rule 8 of the 1963 Rules lays down that every memorandum of appeal shall be written in English and shall set forth, concisely, under distinct heads, the grounds of appeal, without argument or narrative, and such grounds shall be numbered consecutively. Rule 9(1) contains the requirement of filing memorandum of appeal in triplicate with two copies of the order appealed against, two copies of the order of the Income Tax Officer, two copies of the grounds of appeal before the first appellate authority and two copies of the statement of facts, if any, filed before the appellate authority. Sub-rule (3) of Rule 9 gives discretion to the Tribunal to accept a memorandum of appeal which is not accompanied by all or any of the documents referred to in Sub-rule (1). Rule 11 lays down that the appellant shall not urge or be heard in support on any ground not set forth in the memorandum of appeal except with the leave of the Tribunal. A plain reading of Section 253(2) of the Act shows that it does not contain the requirement of the approval by the Commissioner of the grounds of appeal to be filed before the Tribunal. Therefore, the Tribunal was not right in observing that the grounds of appeal filed in September, 1998, were not acceptable because the same had not been approved by

the Commissioner of Income Tax. Rule 9(1) does contain the requirement of filing of the specified documents along with the memorandum of appeal, but Sub-rule (3) thereof gives ample discretion to the Tribunal to accept the memorandum of appeal even though it may not be accompanied by any of the documents referred to in Sub-rule (1). These provisions are procedural in character. Therefore, the failure of the Department to file grounds of appeal on May 6, 1994, should not have been made a ground for dismissing the appeal in limine, more so because in response to the show cause notice issued by the Tribunal, the grounds of appeal duly signed by the Assistant Commissioner of Income Tax (Investigation Circle-II), Chandigarh, had been filed.

10. We are further of the view that the explanation given by the Departmental Representative for non-filing of the grounds of appeal on May 6, 1994, was quite plausible and ought to have been accepted. It has not been controverted before us that Shri R. L. Chhanalia, who was then holding the post of the Assistant Commissioner of Income Tax (Investigation Circle-I), Chandigarh, was a fresh hand and was not having experience of filing appeals. Although it was expected of him to have read the procedural provisions before filing the memorandum of appeal, but his failure to do so did not justify the taking of an extreme view that the Department was guilty of gross negligence.

11. For the reasons mentioned above, the appeal is allowed, the order dated August 5, 1999, passed by the Tribunal is set aside and the case is remanded to it for deciding the appeal of the Revenue on the merits.